

PART C: REPORT

The Report describes the regulatory framework for regional and local government that impacts on RED formation. It further consolidates pertinent provisions of the existing and proposed electricity legislation with a view to establishing the regulatory framework for the Erongo RED.

The Report serves as a reference document for the development of appropriate legal instruments required for RED formation. It also serves to inform the Stakeholder Guidelines. It consists of five chapters, the first of which contains a description of the Namibian Energy Policy and the legal status of the shareholder organisations involved. Chapter 2 summarises the regulatory framework for local authorities. Chapter 3 deals with a discussion of the regulatory framework for regional councils. In Chapter 4, the regulatory framework for the Erongo RED Company is described. Chapter 5 contains some concluding remarks.

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Chapter 1

INTRODUCTION

This chapter contains a description of the Namibian Energy Policy focusing on policy statements pertaining to the Namibian ESI restructuring and the reorganisation of electricity distribution. The description of the legal status of the shareholder organisations serves to inform the description of the regulatory framework for local authorities and regional councils, respectively.

C.1.1 The Namibian Energy Policy

C.1.1.1 According to the White Paper on Energy Policy, developed by the Energy Policy Committee of the Ministry of Mines and Energy and published in May 1998, the Namibian ESI is characterised by a virtual monopoly in electricity generation and transmission, and a fragmented electricity distribution industry. Electricity end-users have limited influence on price, quality and reliability of electricity supply.

C.1.1.2 Certain pertinent goals serve as a framework for the energy policies in the White Paper. These goals are:

- (a) Effective governance
- (b) Security of supply
- (c) Social upliftment
- (d) Investment and growth
- (e) Economic competitiveness and efficiency
- (f) Sustainability.

C.1.1.3 The following policy statements reflected in the White Paper are relevant:

- (a) *Government will investigate options for improving sector efficiency through electricity supply industry restructuring.* Electricity supply industry restructuring should create an enabling environment for both public and private involvement in the electricity supply industry by

addressing the scope for increased private sector participation, the reorganisation of electricity distribution, integration of the Namibian ESI with the rest of Southern Africa, and the possibility for competition in electricity generation and supply, particularly by encouraging independent power producers to enter the market. A restructured electricity distribution sector is seen as a prerequisite for other policy initiatives aimed at social upliftment, investment and growth, and effective sector governance.

- (b) *Government will introduce an institutional system, with both regulatory and policy making functions, to monitor and regulate electricity price developments. Electricity tariff structures and prices will be based on sound economic principles, generally and as a whole reflecting the long-run marginal cost of electricity supply. An impediment to increased efficiency is the lack of a national electricity pricing framework. Present pricing structures and levels do not reflect the cost of supply to various customer groups and areas. Prices are also not market-related and are in many instances non-transparent, at the level of bulk supply and retail sales. Electricity pricing reform will contribute towards levelling the playing field between existing ESI participants, possible new Namibian players and players in the Southern African region, thereby enhancing sector efficiency and competitiveness.*

- (c) *Government will ensure that licences for distribution of electricity in urban areas under the Electricity Act include provisions, such as electrification targets and a fair tariff structure, that facilitate increased access to electricity among low-income consumers. The relative low cost of electricity provision in densely populated urban areas indicates that increased urban electricity provision is a priority policy measure.*

- (d) *Government is committed to continuing the rural electrification programme using transparent planning and evaluation criteria for new projects. Increased rural access to electricity is hampered by a lack of financial and skilled human resources, a lack of role clarity in the public sector and the electricity distribution industry, and limited knowledge about rural household income and energy use patterns. As a result, rural electrification is predominantly driven by socio-political factors. Criteria, methodologies and prioritisation processes for rural*

electrification need to be improved, including the targeting of social institutions such as schools and clinics, and cross-subsidies to poor rural households.

- (e) *Government will pursue alternatives to donor funding to mobilise sustainable levels of finance to continue the expansion and supply of electricity. Financing will be channelled through an electrification fund to be created for both grid and non-grid electrification projects. The government will consider the introduction of an electrification levy to be used specifically for electrification, as well as other options to mobilise capital within the ESI for electrification.*
- (f) *Electricity supply in Namibia shall be based on a balance of economically efficient and sustainable electricity sources including gas, hydro-power, other renewable energy sources and imported electricity. Although Namibia's resources are more than sufficient to meet future electricity demands, it is important that the cost and efficiency of internal resource utilisation is compared to that of imports. This will ensure not only rational economic resource utilisation to the benefit of electricity consumers in Namibia, but also improved security of supply through diversification of the electricity supply base.*
- (g) *Government will facilitate the establishment of new high-voltage interconnections to neighbouring countries to increase Namibia's possibilities of engaging actively in regional electricity trading. Active electricity trading with neighbouring countries will ensure that the cost of electricity supply to customers in Namibia remains competitive compared to other countries in the Southern Africa region, and will limit the risk of stranded investments in the electricity sector.*
- (h) *Government will promote a dialogue with private investors and financiers with a view to facilitating economically viable and competitive investments in the electricity sector. It will also ensure the establishment of the necessary legal, regulatory, fiscal and environmental frameworks to create a favourable investment climate. This policy will ensure that independent power producers have fair access to the national and local transmission and distribution network, and that major electricity users have the right to choose the most appropriate and economic source of*

electricity supply. Government will base decisions on new electricity generating plant on internationally recognised principles and procedures for environmental and socio-economic impact assessment, mitigation and compensation.

- (i) *Government will co-operate with the electricity supply industry, the private sector and Namibian education institutions to create a sufficiently skilled human resource base to sustain the management, operation and development of the electricity sector.* Such co-operation could include research initiatives, establishment of training programmes and opportunities for local personnel, and initiatives aimed at building sufficient local technical capacity to sustain the operation and maintenance of electricity systems.
- (j) *Government will encourage and promote the participation of black Namibians in all aspects of the electricity industry, including ownership structures of electricity generation and supply.* Options for encouraging economic empowerment may include the explicit consideration of empowerment targets in the licensing of independent power projects and granting of distribution franchises.
- (k) *Government will implement a modern and appropriate legal framework for the electricity sector through the Electricity Act and associated regulations, and the creation and resourcing of a competent Electricity Board to regulate the sector's operations.* The electricity sector is presently hampered by an outdated legal and regulatory framework, and the lack of a professional and independent regulator. In order to achieve energy sector objectives related to economic efficiency and competitiveness, broadening of the electricity supply base, and investment and growth through the electricity sector, an efficient and well-functioning governance framework is required.
- (l) *Government will ensure that adequate protection of electricity end-users and licensees is established through the creation and resourcing of the Electricity Board to be established under the Electricity Act.* Electricity end-users in Namibia sometimes experience problems with insufficient quality and reliability of supply and irrational electricity pricing. Presently there are insufficient institutional structures to which end-users can

address their complaints and concerns. Similarly, under the forthcoming Electricity Act, licensees might need a mechanism for dispute resolution related to interpretation of conditions in their licences.

- C.1.1.4 The above-mentioned policy statements will have to be taken into account throughout the RED formation process.

C.1.2 The shareholder organisations

The shareholder organisations comprise the Municipality of Walvis Bay, Swakopmund Municipality, Henties Bay Municipality, Usakos Municipality, Karibib Municipality, Omaruru Municipality, Arandis Municipality, Uis Village Council, Namibia Power Corporation (Pty) Limited and the Erongo Regional Council.

C.1.2.1 Walvis Bay

- (1) Walvis Bay is a Part I municipality. The municipality regulates the supply of electricity in its area of jurisdiction in terms of the Standard Electricity Supply By-law, 1988.
- (2) In terms of the South African Transfer of Walvis Bay to Namibia Act, 1993 (Act No. 203 of 1993), Walvis Bay was transferred to Namibia with effect from 1 March 1994. The effect of the transfer was that from the date of transfer:
 - (a) Walvis Bay ceased to be part of South Africa
 - (b) South Africa ceased to have sovereignty over Walvis Bay
 - (c) South Africa ceased to exercise authority in Walvis Bay.
- (3) All laws in force in Walvis Bay, as far as South Africa is concerned, ceased to be of force as from the date of transfer, except the following:
 - (a) The Children's Act, 1960
 - (b) The Aged Persons Act, 1967
 - (c) The Veteran's Pensions Act, 1968
 - (d) The Blind Persons Act, 1968
 - (e) The Disability Grants Act, 1968
 - (f) The Social Pensions Act, 1973

- (g) The Child Care Act, 1083
- (h) Pension Laws Amendment Act, 1983.

(4) The above laws were excluded by virtue of Proclamation No. 64 of 1994, which was published on 22 April 1994 in the South African Government Gazette.

(5) The Standard Electricity Supply By-law, 1988, was promulgated in terms of the Municipal Ordinance, 1974, and made applicable to Walvis Bay by the former Cape Provincial Administration. The Local Authorities Act, 1992 did not repeal this Ordinance as far as Walvis Bay is concerned.

(6) Section 95(5) of the Local Authorities Act, 1992, provides that:

“Anything done under a provision of a law repealed ... which could have been done under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision ...”

(7) One of the presumptions in the interpretation of statutes is the avoidance of a *casus omissus* (a contingency not provided for by the statute):

“... it seems to me that if a reasonable construction of an Act does not lead to a *casus omissus* while another construction does lead to that result, the construction which should be applied is the one that does not lead to that result.”
(*Dhanabakium v Subramanian* 1943 AD, 170.)

(8) In view of the above, the Standard Electricity Supply By-law, 1988, can safely be deemed to be electricity supply regulations made under the Local Authorities Act, 1992.

C.1.2.2 Swakopmund

Swakopmund is a Part I municipality. The municipality regulates the supply of electricity in its area of jurisdiction in terms of the Model Electricity Supply Regulations, 1995 [to be confirmed].

C.1.2.3 Henties Bay

Henties Bay is a Part II municipality. The municipality regulates the supply of electricity in its area of jurisdiction in terms of the Model Electricity Supply Regulations, 1995 [to be confirmed].

C.1.2.4 Usakos

Usakos is a Part II municipality. The municipality regulates the supply of electricity in its area of jurisdiction in terms of the Model Electricity Supply Regulations, 1995 [to be confirmed].

C.1.2.5 Karibib

Karibib is a Part II municipality. The municipality regulates the supply of electricity in its area of jurisdiction in terms of the Model Electricity Supply Regulations, 1995 [to be confirmed].

C.1.2.6 Omaruru

Omaruru is a Part II municipality. The municipality regulates the supply of electricity in its area of jurisdiction in terms of the Model Electricity Supply Regulations, 1995 [to be confirmed].

C.1.2.7 Arandis

Arandis is a Part II municipality. The municipality regulates the supply of electricity in its area of jurisdiction in terms of the Model Electricity Supply Regulations, 1995 [to be confirmed].

C.1.2.8 Uis

Uis is a village. The village council regulates the supply of electricity in its area of jurisdiction in terms of the Model Electricity Supply Regulations, 1995 [to be confirmed].

C.1.2.9 NamPower

The Namibia Power Corporation (Pty) Limited ("NamPower") is a state-owned company. NamPower Distribution distributes electricity in farming areas, some smallholding and village

areas and provides bulk supply to other distributors. The electricity is distributed by virtue of the NamPower standard conditions of supply of electricity.

C.1.2.10 Erongo

Erongo is one of the regions in Namibia. The regional council regulates the supply of electricity in settlement areas in terms of the Model Electricity Supply Regulations, 1995 [to be confirmed].

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Chapter 2

FRAMEWORK FOR LOCAL AUTHORITIES

The description of the regulatory framework for local authorities in Namibia comprises a description of the Local Authorities Act, 1992, as amended (“LAA”), The Commercialisation Regulations, 2001 (“CRs”), the Joint Business Venture Regulations, 2001 (“JBVRs”), and the Electricity Act, 2000 (“EA”), and its proposed amendments.

C.2.1 Provision of electricity

The description of the regulatory framework for the provision of electricity relates to the power to supply electricity, the power to regulate and offences.

C.2.1.1 Power to supply electricity

- (1) Subject to the provisions of the EA, a local authority council has the power to supply electricity to the residents in its area (section 30(1)(f) of the LAA).
- (2) The provision of electricity within the area of jurisdiction of a local authority council is under the control of that council, except to the extent that a person has acquired the right to provide electricity within that area in the following circumstances:
 - (a) Under a licence and in terms of section 54A [32A of the EA?] or any other provision of the LAA
 - (b) In terms of a licence
 - (c) Under a licence and by agreement with the council concerned
 - (d) In terms of a provision of the EA (proposed section 32(1) of the EA).
- (3) A local authority council may by notice in writing order a person to remove a connection or to repair or render operable a main or branch cable, wire or conduit for conveying an electric current. If the person refuses or fails to comply with the order to the satisfaction of the council, the council may cause steps to be taken

that are necessary for compliance with the notice and to recover the costs connected therewith from the person concerned (section 55(2) of the LAA).

C.2.1.2 Power to regulate

A local authority council may, after consultation with the Minister, make regulations in relation to the supply of electricity, including the prohibition, restriction and use of electrical appliances, and the cutting off of electricity on account of failure to pay charges or fees determined in respect of the supply of electricity (section 94(1)(j) of the LAA).

C.2.1.3 Offences

The following offences are prescribed:

- (a) A person who sells, supplies or enters into an agreement to sell or supply electricity within the local authority area in question without the prior approval in writing of the local authority council or otherwise than in accordance with an agreement with one or more other councils, the Government or a regional council to act as agent or to co-operate
- (b) A person who makes a connection to a main or branch cable, wire or conduit for conveying an electric current without the prior approval in writing of the council
- (c) A person who damages, endangers, renders inoperable or destroys a main or branch cable, wire or conduit for conveying an electric current (section 55(1) of the LAA).

C.2.2 Capacity to contract

The description of the regulatory framework for the capacity to contract relates to agreements between local authorities or local authorities and Government or regional councils, regional electricity distribution, the signing of contracts and limitation of liability.

C.2.2.1 Agreements between local authorities or local authorities and Government or regional councils

- (1) A local authority council may enter into an agreement with the Government of Namibia, which provides for the exercise or performance by the council as the

agent of the Government, of any power, duty or function of a functionary of the Government (section 32(1)(a) of the LAA).

- (2) A local authority council may enter into an agreement with the Government of Namibia, which provides for the exercise or performance by the Government as the agent of the council, of any power, duty or function of that council (section 32(1)(b) of the LAA).
- (3) A local authority council may enter into an agreement with the Government of Namibia, which provides for the exercise or performance by the council in co-operation with the Government, of any power, duty or function of that council or a functionary of the Government (section 32(1)(c) of the LAA).
- (4) A local authority council may enter into an agreement with one or more other local authority councils, which provides for the exercise or performance by the council as the agent of the other council or councils, of any power, duty or function of the other council or councils (section 32(1)(a) of the LAA).
- (5) A local authority council may enter into an agreement with one or more other local authority councils, which provides for the exercise or performance by the other council or councils as the agent of the council, of any power, duty or function of that council (section 32(1)(b) of the LAA).
- (6) A local authority council may enter into an agreement with one or more other local authority councils, which provides for the exercise or performance by the council in co-operation with the other council or councils, of any power, duty or function of that council or the other council or councils (section 32(1)(c) of the LAA).
- (7) A local authority council may enter into an agreement with a regional council, which provides for the exercise or performance by the council as the agent of the regional council, of any power, duty or function of that regional council (section 32(1)(a) of the LAA).
- (8) A local authority council may enter into an agreement with a regional council, which provides for the exercise or performance by the regional council as the

agent of the local authority council, of any power, duty or function of that local authority council (section 32(1)(b) of the LAA).

(9) A local authority council may enter into an agreement with a regional council, which provides for the exercise or performance by the local authority council in co-operation with the regional council, of any power, duty or function of that council or the regional council (section 32(1)(c) of the LAA).

(10) Any power, duty or function, which in terms of an agreement has been exercised or performed by:

- (a) A local authority council or any staff member or body in the employ or under the control of the council; or
- (b) a functionary of the Government or any staff member or body in the employ or under the control of the Government; or
- (c) other local authority councils or any staff member or body in the employ or under the control of the other councils; or
- (d) a regional council or any staff member or body in the employ or under the control of the regional council,

and which is by law conferred or imposed upon a functionary of the Government, the council, the regional council, the staff member or body other than the council, is deemed to have been exercised or performed by the functionary, the council, the regional council, the staff member or body upon which the power, duty or function is so conferred or imposed (section 32(2) of the LAA).

(11) Notwithstanding the LAA, a local authority council may, together with such other regional councils and local authority councils and other persons, including Government or any body under the authority of Government, as may be permitted to join the regional electricity distribution (“RED”) company, enter into an agreement with a RED company (to whom a licence has been issued or is going to be issued) and provide in the agreement for the exercise or performance on the terms and conditions, as may be agreed upon, by the RED company, of electricity related powers, duties and functions conferred or imposed in terms of the LAA or any other law upon the regional council, the council or other person concerned (proposed section 32A(1) of the EA).

C.2.2.2 Regional electricity distribution

- (1) A power, duty or function which, in terms of the agreement mentioned above has been exercised or performed by a regional council or local authority council council or other person, or by an officer or employee or body in the employ or under the control of the regional council, the council or the person and [which] in terms of the Regional Councils Act, 1992, the LAA or any other law, is conferred or imposed upon a council or regional council, person, officer, employee or body, is deemed to have been exercised or performed by the council or regional council, person, officer, employee or body (proposed section 32A(2) of the EA).
- (2) An agreement entered into by a regional council or local authority council or other person with a RED company before the commencement of section 32A of the EA, whereby the RED company has been entrusted with the function of rendering an electricity related service in the area of the regional council or local authority or under the control of the person, is deemed to be an agreement described in subparagraph (9) above (proposed section 32A(3) of the EA).

C.2.2.3 Signing of contracts

- (1) A contract to be entered into by a local authority council pursuant to a resolution by the council must be signed by the CEO of the council and be co-signed as follows:
 - (a) In the case of a municipal council or a town council, the chairperson of the management committee or any staff member of the council generally or specially authorised thereto by the council
 - (b) In the case of a village council, the chairperson thereof or any staff member of the council generally or specially authorised thereto by the council.
- (2) A contract so signed is deemed to have been duly executed on behalf of the council (section 31A of the LAA).

C.2.2.4 Limitation of liability

No compensation is payable by a local authority council, a member of the council or staff member employed in carrying out the provisions of the LAA in respect of any act done in good faith under the LAA (section 33 of the LAA).

C.2.3 Fixed assets

The description of the regulatory framework for fixed assets relates to the powers, duties and functions of local authorities, circumstances in which Ministerial approval is not required, the construction of works and machinery and the granting of assistance to residents for purposes of the acquisition of appliances for the supply of electricity to their property.

C.2.3.1 Powers, duties and functions of local authorities

A local authority council has the power to buy, hire or otherwise acquire, with the prior approval of the Minister and subject to the conditions which the Minister determines, any immovable property or any right in respect of immovable property for any purpose connected with the powers, duties or functions of the council, or to sell, let or otherwise dispose of or encumber the immovable property (section 30(1)(t) of the LAA).

C.2.3.2 Circumstances in which Ministerial approval is not required

- (1) The approval of the Minister is not required in relation to the following:
- (a) The letting of immovable property other than townlands or a portion thereof for a period not exceeding one year
 - (b) The selling or disposal, or letting or encumbrance of immovable property other than townlands or a portion thereof by a Part I municipal council (Walvis Bay and Swakopmund)
 - (c) The acquisition by a council of the following:
 - (i) Immovable property transferred to the council as a condition of any subdivision of land approved in terms of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963)
 - (ii) Immovable property by way of a grant or donation
 - (d) A cemetery (section 63(1) of the LAA).

- (2) A Part I municipal council (Walvis Bay and Swakopmund) must, before immovable property is sold, disposed of, or let or otherwise encumbered, whether by way of public auction or tender or private transaction, cause a notice to be published in at least two newspapers circulating in its area on one occasion in a week for two consecutive weeks. The notice must contain the following particulars:
- (a) The zoning and location of the property and the place, dates and times where full particulars relating to the sale, disposal, letting or encumbrance of the property will lie for inspection by interested persons for a period of at least seven days after the last date of publication of the notice
 - (b) In the case of the sale, letting or disposal of the immovable property by way of a private transaction, calling upon interested persons to lodge objections to the sale, disposal or letting with the council in writing within a period of not less than 10 days after the last date of the publication of the notice (section 63(2) of the LAA).
- (3) If no objection has been lodged, the council is entitled to sell, let or dispose of the immovable property by way of the private transaction within one year from the last date of the publication of the notice. If an objection has been lodged, the immovable property may not be sold, let or disposed of unless the council has obtained the approval of the Minister. For purposes of obtaining the approval by the Minister, the council must submit to the Minister all the particulars required by the Minister in relation to the proposed transaction, together with the objections lodged and the comments of the council thereon. The Minister may grant or refuse to grant the approval or may direct that the property be sold, let or disposed of by way of public auction or tender (section 63(3) of the LAA).

C.2.3.3 Construction of works and machinery

For purposes of supplying electricity to the residents in its area, a local authority council may do the following:

- (a) Establish, acquire, construct or provide any works and machinery whether within or outside its area, and maintain and carry on the works and machinery

- (b) Subject to the Expropriation Ordinance, 1978, or on the terms and conditions otherwise determined by mutual agreement between the council and the owner of immovable property, enter upon the property and:
 - (i) Lay on, across, through or under the immovable property any main and branch cables, wires and conduits and any civil or mechanical structures, including without limitation enclosures, poles, isolators, foundations and fences, in connection with the conveying of electric current, of which the ownership at all times vests in the council
 - (ii) connect, at the request of the owner or occupier of the property, cables, wires and conduits within the property
- (c) Lay cables, wires and conduits through, across, under or over a street or public place
- (d) Generally, perform or carry out other functions necessary for, or conducive to, the power of supplying electricity to the residents in its area (section 52 of the LAA as amended by proposed section 42(2) of the EA).

C.2.3.4 Granting of assistance to residents for purposes of acquisition of appliances in relation to supply of electricity to their immovable property

- (1) A local authority council may, on the terms and conditions determined by mutual agreement, supply electricity to persons other than residents in its area, or cause electricity to be so supplied (section 53 of the LAA).
- (2) A local authority council may render, upon the request of an owner of immovable property and on the conditions (including conditions relating to the levying of interest) determined by mutual agreement, assistance to the owner to provide a supply of electricity for the immovable property by way of an advance or loan to the owner or by constructing itself any appliances for purposes of the supply, and cause particulars of the advance, loan or expenses incurred in respect of the construction of the appliances to be noted by the registrar of deeds in his or her registers in respect of the immovable property in question (section 54(1) of the LAA).
- (3) An advance or loan granted or expenses incurred in respect of the construction of the appliances, together with any interest payable thereon, is a first charge upon the immovable property in respect of which the advance or loan has been

granted or expenses have been incurred and in respect of which particulars have been noted by the registrar of deeds (section 54(2) of the LAA).

C.2.4 Finances

The description of the regulatory framework for finances relates to the funds of a local authority council, accounting officers, the financial year, the budget, the application of funds, the auditing of accounting records, the power to determine charges and surcharges.

C.2.4.1 Funds

- (1) The funds of a local authority council consist of the following:
 - (a) Moneys appropriated by law
 - (b) The rates, charges, fees and other moneys levied under the LAA and received by the council
 - (c) Moneys borrowed by the council by way of loans or the issue of debentures, bills of exchange or other negotiable instruments
 - (d) Interest or dividends derived from investments made
 - (e) Fines
 - (f) Donations
 - (g) Moneys accruing from other sources (section 80(1) of the LAA).
- (2) A local authority council must utilise donations in accordance with the conditions imposed by the donor concerned, in so far as the conditions are capable of being carried out (section 80(2) of the LAA).
- (3) A local authority council may invest an unexpended portion of its funds with a banking institution, a building society, the Savings Bank or another financial institution approved by the Minister (section 80(3) of the LAA).
- (4) A local authority council may establish a reserve or other fund (section 80(4) of the LAA).

C.2.4.2 Accounting officers

The CEO or another staff member designated by the local authority council is the accounting officer of the council and is charged with the responsibility of accounting for all the moneys received, and for all payments made, by the council (section 81 of the LAA).

C.2.4.3 Financial year

The financial year of a local authority council ends on 30 June in each year (section 82 of the LAA).

C.2.4.4 Budget

- (1) A local authority council must in each financial year cause to be prepared, after consultation with the regional council in whose area the local authority council is located, a statement of its estimated income and expenditure during the following financial year. The council may in any financial year at any time cause to be prepared, after consultation with the regional council concerned, supplementary statements of its estimated income and expenditure for the financial year. The statements must be submitted by the chairperson of the council to the council for approval (section 83(1) of the LAA).
- (2) A budget and supplementary budgets are compiled in the form determined by the Minister and must at least specify the following:
 - (a) The different revenue sources and the expected revenue from each source
 - (b) According to the arrangements required by the Minister, the different programmes and different projects in the programmes for the purposes of which money is intended to be applied, and the estimated expenditure in respect of each such programme and project (section 83(2) of the LAA).
- (3) A local authority council may, until the council has approved the budget and if required, until the Minister has authorised the budget, but for a period of not more than 3 months after the commencement of the financial year in question, authorise in respect of that financial year the application of amounts in relation to

any matter in respect of which there was an approval and authorisation in the previous financial year. The total amount so applied may not at any time exceed an amount equal to 25 percent of the total amount appropriated for the previous financial year (section 83(3) of the LAA).

C.2.4.5 Application of funds

- (1) A local authority council may not apply its money otherwise than in accordance with an approval by council and, if required, the Ministerial authorisation (section 84(1) of the LAA).
- (2) A local authority council may not incur expenditure in respect of which an amount of money has been appropriated and which related to revenue derived from the Government of Namibia, unless it has obtained the prior authorisation of the Minister (section 84(2) of the LAA).
- (3) For purposes of obtaining the authorisation, the local authority council must submit the budget to the Minister together with any statement, document or information required by the Minister (section 84(3) of the LAA).
- (4) The Minister authorises the expenditure if the Minister is satisfied that the amount appropriated in respect of the expenditure has been appropriated in accordance with the conditions imposed in respect of the accrual of the revenue (section 84(4) of the LAA).
- (5) A local authority council may, with the approval of the Minister, apply an amount for a purpose for which no provision was made in a budget or for the purpose of a programme or project for which insufficient provision was made in the budget. The amount must be appropriated by the council before the end of the financial year in which its application has been approved. A council may, unless the Minister directs otherwise, apply any saving under a particular programme for the purpose of another programme on the budget or supplementary budget, or a particular project in a programme on the budget or supplementary budget for the purposes of another project in the same programme (section 84(5) of the LAA).
- (6) The Minister may at any time, after consultation with the local authority council, withdraw or suspend for a particular period any authorisation granted for the

expenditure of a particular amount in so far as the amount has not yet been expended (section 84(6) of the LAA).

C.2.4.6 Auditing of accounting records

- (1) The accounting officer of a local authority council must keep accounting records, which are necessary to reflect the transactions and financial state of affairs of the council (section 86(1) of the LAA).
- (2) The accounting records of a local authority council and its financial statements must be audited by the Auditor-General (section 85 of the LAA).

C.2.4.7 Power to determine charges

- (1) A local authority council has the power to determine by notice in the Government Gazette the charges, fees and other moneys payable in respect of any service, amenity or facility established and provided by the council, including the following:
 - (a) Deposits payable as security for payment of the charges, fees or other moneys;
 - (b) the levy of interest at a specified rate, which may not exceed the rate prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), on unpaid debts in respect of the charges, fees or other moneys;
 - (c) charges for the provision of a service rendered by the local authority council in respect of immovable property with or without improvements, being:
 - (i) An availability charge leviable in respect of immovable property connected to or supplied with the service as well as immovable property not so connected or supplied but which can reasonably be so connected or supplied; or
 - (ii) a minimum charge leviable in respect of immovable property connected to or supplied with the service, based on a minimum supply, whether or not the service is being utilised (section 30(1)(u) of the LAA).

- (2) A local authority council may not delegate its power to determine rates, charges, fees or other moneys that may be levied in terms of the LAA (section 31(1)(c) of the LAA).
- (3) The requirement to determine by notice in the Government Gazette does not apply to a charge, fee or other moneys payable in respect of an electricity service, amenity, facility or matter, if the charge, fee or other moneys appear in its schedule of approved tariffs, if the council holds an electricity licence, but subject to the following requirements:
- (a) The local authority council must visibly display the charges, fees or moneys at the place where payment thereof are made at its offices
 - (b) The council must provide the amount of the charge, fee or moneys to any person requesting it (proposed section 42(2) of the EA).

C.2.4.8 Surcharges

A local authority council is entitled to levy a charge against its customers in accordance with the manner determined by the ECB and on the following conditions:

- (a) The surcharge and the amount thereof, including interest of late payments, and the duration thereof, must be approved by the ECB
- (b) The surcharge must be reflected on the invoice to the customer against whom it is levied by the licensee who is responsible to supply electricity to the customer
- (c) The ECB may distinguish between different local authorities or between different classes of local authorities and different amounts of surcharges may be approved
- (d) The purpose of the surcharge is to provide additional income to the relevant council for the purposes of covering the expenses of services to be rendered by the council and for this purpose the ECB must determine which services may be taken into consideration and the methodology of calculation of the surcharge
- (e) A customer is liable towards the council for the surcharge despite the fact that a licensee who is not the council is collecting the surcharge
- (f) The collecting licensee must collect and pay the surcharge to the council concerned in accordance with the manner determined by the ECB or, in the absence of a determination, an agreement reached between the parties. The determination or agreement must include the period within which the surcharge must be paid over to the council and the interest on arrear payments

- (g) The surcharge is not subject to any form of taxation (proposed section 32C of the EA).

C.2.5 Discussion of matters of public interest

- C.2.5.1 The chairperson of a local authority council may, if the chairperson deems it fit, and must, upon a request in writing signed by at least 10 percent of the voters registered in the local authority area, convene a meeting of the council to which the public is invited by public notice in a newspaper circulating in the local authority area and such other manner calculated to reach as many members of the public as possible for purposes of discussion of a matter of public interest set out in the request, on a date and time and public place in the local authority area determined by the chairperson (section 88(1) of the LAA).
- C.2.5.2 The costs incurred in convening the meeting are paid out of funds of the council (section 88(3) of the LAA).

C.2.6 Commercialisation

On 5 March 2001, the Minister of Regional and Local Government and Housing published regulations under the LAA to regulate the commercialisation of services rendered or duties or functions exercised or carried out by local authorities. The description of the regulatory framework for commercialisation relates to the conditions for commercialisation, alienation or encumbrance of shares and assets, and pooling of resources, services and property, the amendment or alteration of the statutes and articles of association, trust deed, shares or interest structure, or nature of operations, of the company or trust conducting the commercialised business, the auditing of accounting records and financial statements of the commercialised business, a member or staff member of council not to be employed by the company, general matters and regional electricity distribution.

C.2.6.1 Conditions for commercialisation

- (1) A local authority council may commercialise any service rendered, or duty exercised or function carried out by the council.
- (2) The commercialisation is subject to the prior written approval of the Minister on the conditions imposed by the Minister (regulation 2 of the CRs).

C.2.6.2 Form and manner of commercialisation

- (1) A local authority council may commercialise a service, function or duty by means of the acquisition of all the shares in a company registered or to be registered in terms of the Companies Act, 1973, or the registering of a company of which the council is the sole shareholder.
- (2) The council may further transfer and make over in writing to the company the power and authority to render, exercise or carry out the service, duty or function to enable the company to render, exercise or carry out the service, function or duty (regulation 3 of the CRs).

C.2.6.3 Alienation or encumbrance of shares and assets, and pooling of resources, services and property

- (1) A local authority council may not alienate, encumber or dispose of any shares owned by it in, or any of the assets of, or the council's interest in, a company conducting a commercialised business, without the prior written approval by the Minister, subject to the conditions imposed by the Minister in the approval, granted after consultation with the Minister of Trade and Industry.
- (2) The council may pool any of its resources, services or property in a company conducting a commercialised business.
- (3) The following persons may not obtain any shares or interest in a company conducting a commercialised business without the prior written approval of the council concerned, which approval may only be granted after consultation with the Minister:
 - (a) A member of the local authority council
 - (b) A staff member of the council
 - (c) A person who is related to the member or staff member
 - (d) A person who is a member of the household of the member or staff member
 - (e) A person with whom the member or staff member is a partner in a customary union

- (f) A person who is a partner, agent or business associate of the member or staff member (regulation 4 of the CRs).

C.2.6.4 Amendment or alteration of statutes and articles of association, trust deed, shares or interest structure, or nature of operations, of company conducting a commercialised business

- (1) The statutes and articles of association of a company conducting a commercialised business, must provide that, or must be amended to provide that, irrespective of the voting power of the local authority council on the board of directors of the company, the statutes or articles of association may not be amended or the share structure altered, including the transfer of ownership in shares, or the nature of operations of the company conducting the commercialised business and the risks pertaining thereto, may not be changed without the prior written approval of the council.
- (2) The approval may only be granted in consultation with the Minister and the approval must be entered into the minutes of the company concerned (regulation 5 of the CRs).

C.2.6.5 Audit of accounting records and financial statements of commercialised business

- (1) The accounting records and financial statements of a joint business venture is subject to audit by the Auditor-General.
- (2) The company must submit to the Minister and to the local authority council concerned copies of the audited accounting records and financial statements, together with a report by the Auditor-General relating to the audit conducted within a period of 30 days after the completion of the audit (regulation 6 of the CRs).

C.2.6.6 Member or staff member of council not to be employed by company

- (1) A company conducting a commercialised business may not employ a member or staff member of the local authority council.

- (2) A staff member may resign from the council in order to take up employment with the company (regulation 7 of the CRs).

C.2.6.7 General

A local authority council may acquire or register a company for the purpose of conducting a commercialised business in competition or in conflict with its own operations, if it serves to improve the efficiency or effectiveness of its own operations (regulation 8 of the CRs).

C.2.6.8 Regional electricity distribution

The provisions of the LAA regarding commercialisation and any regulations in connection therewith, do not apply to an agreement for the establishment of a RED company (proposed section 32A(4) of the EA).

C.2.7 Joint business venturing

On 5 March 2001, the Minister of Regional and Local Government and Housing published regulations under the LAA to regulate joint business venturing among the different levels of government in Namibia. The description of the regulatory framework for joint business venturing relates to the conditions for entry into a joint business venture, the form of a joint business venture, the alienation, encumbrance or disposal of shares and assets, and the pooling of resources, services and property, the acquisition of shares or other interest in a joint business venture by members or staff members of council, representation of council on the board of directors or board of trustees, the amendment or alteration of the articles of association and statute, the trust deed, the share or interest structure or nature of operations of the joint business venture, members or staff members of council not to be employed by a joint business venture, the audit of accounting records and financial statements of a joint business venture, general matters and regional electricity distribution.

C.2.7.1 Conditions for entry into joint business venture

- (1) A local authority council may enter into a joint business venture with the Government (which includes a Ministry, a regional council, another local authority council, a parastatal or a non-governmental organisation) for the purposes of exercising, performing or carrying out its statutory powers, functions or duties.

- (2) The joint business venture must be aimed at promoting economic development and employment creation within the area of jurisdiction of the council concerned or supplementing the funds of the council.
- (3) The entry into a joint business venture by a local authority council is subject to the prior written approval of the Minister on the conditions imposed by the Minister.
- (4) The written approval of the Minister is not required in the case of a Part I municipality (Walvis Bay and Swalopmund) (regulation 2 of the JBVRs).

C.2.7.2 Form of joint business venture

- (1) For the purpose of establishing the joint business venture, the local authority council may take up shares in an existing company registered, or in a company to be registered, in terms of the Companies Act, 1973.
- (2) Alternatively, it may accept the position of beneficiary of the trust established.
- (3) Alternatively, it may enter into an agreement with the Government relating to the joint business venture (regulation 3 of the JBVRs).

C.2.7.3 Alienation, encumbrance or disposal of shares and assets, and pooling of resources, services and property

- (1) A local authority council other than the council of a Part I municipality (Walvis Bay and Swakopmund), may not alienate or encumber any shares owned by it in a joint business venture.
- (2) It may not encumber or dispose of its assets or other interest therein without the prior written approval of the Minister, subject to the conditions imposed by the Minister in the approval, granted after consultation with the Minister of Trade and Industry. The approval must specify the purchaser or the beneficiary and the relevant shares or assets.

- (3) A local authority council may pool in a joint business venture any of its resources, services or property. This may be done subject to the conditions imposed by the Minister in the initial approval (regulation 4 of the JBVRs).

C.2.7.4 Acquisition of shares or other interest in joint business venture by members or staff members of council

- (1) The following persons may not buy, accept, receive or otherwise acquire any shares or other interest in a joint business venture:
- (a) A member of the local authority council
 - (b) A staff member of the council
 - (c) A person who is related to the member or staff member
 - (d) A person who is a member of the household of the member or staff member
 - (e) A person with whom the member or staff member is a partner in a customary union
 - (f) A person who is a partner, agent or business associate of the member or staff member.
- (2) The above excludes payments relating to director's fees or member's fees, or payment for services rendered with the written approval of the council (regulation 5 of the JBVRs).

C.2.7.5 Representation of council on board of directors or board of trustees

The representation of a local authority council concerned on the board of directors of a company or a board of trustees of a trust, in relation to the total representation on the board concerned, must be commensurate to the ratio which the monetary value of the input by the council in the joint business venture bears to the monetary value of the total shareholder's investment in the venture (regulation 6 of the JBVRs).

C.2.7.6 Amendment or alteration of articles of association and statute, trust deed, share or interest structure or nature of operations of joint business venture

- (1) The statutes and articles of association of a company or the trust deed of a trust must provide that, irrespective of the voting power of the local authority council

on the board of directors or at any meeting of the trustees, the statutes or articles of association or the trust deed may not be amended and the share or interest structure altered, including the transfer of ownership in shares, or the nature of operations of the joint business venture and the risks pertaining thereto, may not be changed without the prior written approval of the council.

- (2) The approval may only be granted in consultation with the Minister and the approval must be entered into the minutes of the joint business venture concerned (regulation 7 of the JBVRs).

C.2.7.7 Members or staff members of council not to be employed by joint business venture

- (1) A joint business venture may not employ a member or staff member of a local authority council.
- (2) A staff member may resign from the council in order to take up employment with a joint business venture (regulation 9 of the JBVRs).

C.2.7.8 Audit of accounting records and financial statements of joint business venture

- (1) The accounting records and financial statements of a joint business venture is subject to audit by the Auditor-General.
- (2) The joint business venture must submit to the Minister and to the local authority council concerned copies of the audited accounting records and financial statements, together with a report by the Auditor-General relating to the audit conducted within a period of 30 days after the completion of the audit.
- (3) The above requirement does not prevent a joint business venture, which is a company, to appoint its own auditors as required by the Companies Act, 1973 (regulation 8 of the JBVRs).

C.2.7.9 General

A local authority council may enter into a joint business venture for the purpose of conducting a joint business venture in competition or in conflict with its own operations, if it serves to improve the efficiency or effectiveness of its own operations (regulation 10 of the JBVRs).

C.2.7.10 Regional electricity distribution

The provisions of the LAA regarding joint business ventures and any regulations in connection therewith, do not apply to an agreement for the establishment of a RED company (proposed section 32A(4) of the EA).

PART C: REPORT

Chapter 3

FRAMEWORK FOR REGIONAL COUNCILS

The discussion of the regulatory framework for regional councils in Namibia comprises a discussion of the Regional Councils Act, 1992, as amended ("RCA"), the Commercialisation Regulations, 2001 ("CRs"), the Joint Business Venture Regulations, 2001 ("JBVRs"), the Local Authorities Act, 1992 ("LAA") (as far as the management and control of settlement areas are concerned) and the Electricity Act, 2000 ("EA"), and its proposed amendments.

C.3.1 Provision of electricity

The description of the regulatory framework for the provision of electricity relates to the power to supply electricity, the power to regulate and offences.

C.3.1.1 Power to supply electricity

- (1) Subject to the provisions of EA, a regional council has the power to supply electricity to the residents in a settlement area within the region as if the regional council were a village council (section 32(1)(a) of the RCA read with section 30(1)(f) of the LAA).
- (2) The provision of electricity within the area of jurisdiction of a regional council is under the control of that council, except to the extent that a person has acquired the right to provide electricity within that area in the following circumstances:
 - (a) Under a licence and in terms of section 54A [32A of the EA?] or any other provision of the RCA
 - (b) In terms of a licence
 - (c) Under a licence and by agreement with the council concerned
 - (d) In terms of a provision of the EA (proposed section 32(1) of the EA).
- (3) A regional council (as if it were a village council) may by notice in writing order a person to remove a connection or to repair or render operable a main or branch

cable, wire or conduit for conveying an electric current. If the person refuses or fails to comply with the order to the satisfaction of the council, the council may cause steps to be taken that are necessary for compliance with the notice and to recover the costs connected therewith from the person concerned (section 32(1)(a) of the RCA read with section 55(2) of the LAA).

C.3.1.2 Power to regulate

A regional council (as if it were a village council) may, after consultation with the Minister, make regulations in relation to the supply of electricity, including the prohibition, restriction and use of electrical appliances, and the cutting off of electricity on account of failure to pay charges or fees determined in respect of the supply of electricity (section 32(1)(a) of the RCA read with section 94(1)(j) of the LAA).

C.3.1.3 Offences

The following offences are prescribed:

- (d) A person who sells, supplies or enters into an agreement to sell or supply electricity within the settlement area in question without the prior approval in writing of the regional council (as if it were a village council) or otherwise than in accordance with an agreement with a local authority council, the Government or another council to act as agent or to co-operate
- (e) A person who makes a connection to a main or branch cable, wire or conduit for conveying an electric current without the prior approval in writing of the council
- (f) A person who damages, endangers, renders inoperable or destroys a main or branch cable, wire or conduit for conveying an electric current (section 32(1)(a) of the RCA read with section 55(1) of the LAA).

C.3.2 Capacity to contract

The description of the regulatory framework for the capacity to contract relates to the agreements between regional councils or regional councils and Government or local authorities, regional electricity distribution, the signing of contracts and limitation of liability.

C.3.2.1 Agreements between regional councils or regional councils and Government or local authorities

- (1) A regional council may enter into an agreement with the Government of Namibia, which provides for the exercise or performance by the council as the agent of the Government, of any power, duty or function of a functionary of the Government (section 30(1)(a) of the RCA).
- (2) A regional council may enter into an agreement with the Government of Namibia, which provides for the exercise or performance by the Government as the agent of the council, of any power, duty or function of that council (section 30(1)(b) of the RCA).
- (3) A regional council may enter into an agreement with the Government of Namibia, which provides for the exercise or performance by the council in co-operation with the Government, of any power, duty or function of that council or a functionary of the Government (section 30(1)(c) of the RCA).
- (4) A regional council may enter into an agreement with one or more other regional councils, which provides for the exercise or performance by the council as the agent of the other council or councils, of any power, duty or function of the other council or councils (section 30(1)(a) of the RCA).
- (5) A regional council may enter into an agreement with the one or more other regional councils, which provides for the exercise or performance by the other council or councils as the agent of the council, of any power, duty or function of that council (section 30(1)(b) of the RCA).
- (6) A regional council may enter into an agreement with one or more other regional councils, which provides for the exercise or performance by the council in co-operation with the other council or councils, of any power, duty or function of that council or the other council or councils (section 30(1)(c) of the RCA).
- (7) A regional council may enter into an agreement with a local authority council, which provides for the exercise or performance by the council as the agent of the local authority council, of any power, duty or function of the local authority council (section 30(1)(a) of the RCA).

- (8) A regional council may enter into an agreement with a local authority council, which provides for the exercise or performance by the local authority council as the agent of the council, of any power, duty or function of that council (section 30(1)(b) of the RCA).
- (9) A regional council may enter into an agreement with a local authority council, which provides for the exercise or performance by the council in co-operation with the local authority council, of any power, duty or function of that council or the local authority council (section 30(1)(c) of the RCA).
- (10) Any power, duty or function, which in terms of an agreement has been exercised or performed by:
- (a) A regional council or any staff member or body in the employ or under the control of the council; or
 - (b) a functionary of the Government or any staff member or body in the employ or under the control of the Government; or
 - (c) other regional councils or any staff member or body in the employ or under the control of the other councils; or
 - (d) a local authority council or any staff member or body in the employ or under the control of the local authority council,

and which is by law conferred or imposed upon a functionary of the Government, the council, the local authority council, the staff member or body other than the council, is deemed to have been exercised or performed by the functionary, the council, the local authority council, the staff member or body upon which the power, duty or function is so conferred or imposed (section 30(2) of the RCA).

- (11) Notwithstanding the RCA, a regional council may, together with such other regional councils and local authority councils and other persons, including Government or any body under the authority of Government, as may be permitted to join the regional electricity distribution (“RED”) company, enter into an agreement with a RED company (to whom a licence has been issued or is going to be issued) and provide in the agreement for the exercise or performance on the terms and conditions, as may be agreed upon, by the RED company, of electricity related powers, duties and functions conferred or imposed in terms of the RCA or any other law upon the regional council, the local authority council or other person concerned (proposed section 32A(1) of the EA).

C.3.2.2 Regional electricity distribution

- (3) A power, duty or function which, in terms of the agreement mentioned above has been exercised or performed by a regional council or local authority council or other person, or by an officer or employee or body in the employ or under the control of the council, the local authority council or the person and [which] in terms of the RCA, the LAA or any other law, is conferred or imposed upon a regional council or local authority council, person, officer, employee or body, is deemed to have been exercised or performed by the council or local authority council, person, officer, employee or body (proposed section 32A(2) of the EA).
- (4) An agreement entered into by a regional council or local authority council or other person with a RED company before the commencement of the provisions of the EA governing regional electricity distribution, whereby the RED company has been entrusted with the function of rendering an electricity related service in the area of the council or the local authority council or under the control of the person, is deemed to be an agreement described in subparagraph (11) above (proposed section 32A(3) of the EA).

C.3.2.3 Signing of contracts

The RCA does not contain explicit arrangements pertaining to the signing of contracts.

C.3.2.4 Limitation of liability

No compensation is payable by a regional council (as if it were a village council), a member of the council or staff member employed in carrying out the provisions of the LAA in respect of any act done in good faith under the LAA (section 32(1)(a) of the RCA read with section 33 of the LAA).

C.3.3 Fixed assets

The description of the regulatory framework for fixed assets relates to the powers, duties and functions of regional councils, the circumstances in which Ministerial approval is not required, the construction or works and machinery and the granting of assistance to residents for purposes of acquisition of appliances for electricity supply to their property.

C.3.3.1 Powers, duties and functions of regional councils

- (1) A regional council has the power, with the approval in writing of the Minister previously obtained, to acquire or hire, or let, sell or otherwise dispose of movable property or any right in respect of immovable property (section 28(1)(j) of the RCA).
- (2) All assets used in relation to a township area or village management area, which has been declared to be a settlement area, and all rights, liabilities and obligations connected with those assets vest in the regional council concerned to the extent and from the date which the Minister determines (section 31(2) of the RCA).
- (3) A regional council may by notice in the Government Gazette make provision for any matter which in the opinion of the council requires to be regulated, including any matter relating to the transfer to any person of assets, liabilities, rights or obligations, which vested in the council in relation to a settlement area (section 31(3)(e) of the RCA).

C.3.3.2 Circumstances in which Ministerial approval is not required

A regional council has the power to acquire or hire, or sell, let or otherwise dispose of movable property (section 28(1)(i) of the RCA).

C.3.3.3 Construction of works and machinery

- (1) For purposes of supplying electricity to the residents in a settlement area, the regional council (as if it were a village council) may do the following:

- (a) Establish, acquire, construct or provide any works and machinery whether within or outside its area, and maintain and carry on the works and machinery
- (b) Subject to the Expropriation Ordinance, 1978, or on the terms and conditions otherwise determined by mutual agreement between the council and the owner of immovable property, enter upon the property and:
 - (i) Lay on, across, through or under the immovable property any main and branch cables, wires and conduits and any civil or mechanical structures, including without limitation enclosures, poles, isolators, foundations and fences, in connection with the conveying of electric current, of which the ownership at all times vests in the council
 - (ii) connect, at the request of the owner or occupier of the property, cables, wires and conduits within the property
- (c) Lay cables, wires and conduits through, across, under or over a street or public place
- (d) Generally, perform or carry out other functions necessary for, or conducive to, the power of supplying electricity to the residents in the settlement area (section 32(1)(a) of the RCA read with section 52 of the LAA as amended by proposed section 42(2) of the EA).

C.3.3.4 Granting of assistance to residents for purposes of acquisition of appliances in relation to supply of electricity to their immovable property

- (1) A regional council (as if it were a village council) may, on the terms and conditions determined by mutual agreement, supply electricity to persons other than residents in a settlement area, or cause electricity to be so supplied (section 32(1)(a) of the RCA read with section 53 of the LAA).
- (2) The regional council may render, upon the request of an owner of immovable property and on the conditions (including conditions relating to the levying of interest) determined by mutual agreement, assistance to the owner to provide a supply of electricity for the immovable property by way of an advance or loan to the owner or by constructing itself any appliances for purposes of the supply, and cause particulars of the advance, loan or expenses incurred in respect of the construction of the appliances to be noted by the registrar of deeds in his or her

registers in respect of the immovable property in question (section 32(1)(a) of the RCA read with section 54(1) of the LAA).

- (3) An advance or loan granted or expenses incurred in respect of the construction of the appliances, together with any interest payable thereon, is a first charge upon the immovable property in respect of which the advance or loan has been granted or expenses have been incurred and in respect of which particulars have been noted by the registrar of deeds (section 32(1)(a) of the RCA read with section 54(2) of the LAA).

C.3.4 Finances

The description of the regulatory framework for finances relates to the funds of a regional council, accounting officers, the financial year, the budget, the application of funds, the auditing of accounting records, the power to determine charges and surcharges.

C.3.4.1 Funds

- (1) The funds of a regional council consist of the following:
- (e) Moneys appropriated by law
 - (f) The rates, charges, fees and other moneys levied and received by the council under the RCA in respect of immovable property situated within a settlement area in its region and services rendered by it or the regulation and control of any matter in a settlement area
 - (g) Moneys borrowed by the council by way of loans or the issue of debentures, bills of exchange or other negotiable instruments
 - (h) Interest or dividends derived from investments made
 - (i) Fines
 - (j) Donations
 - (k) Moneys accruing from other sources (section 33(1) of the RCA).
- (2) A regional council must utilise donations in accordance with the conditions imposed by the donor concerned, in so far as the conditions are capable of being carried out (section 33(2) of the RCA).

- (3) A regional council may invest an unexpended portion of its funds with a banking institution, a building society, the Savings Bank or another financial institution approved by the Minister (section 33(3) of the RCA).
- (4) A regional council may establish a reserve or other fund (section 33(4) of the RCA).

C.3.4.2 Accounting officers

The chief regional officer is the accounting officer of a regional council and is charged with the responsibility of accounting for all the moneys received, and for all payments made, by the council (section 34 of the RCA).

C.3.4.3 Financial year

The financial year of a regional council ends on 31 March in each year (section 35 of the RCA).

C.3.4.4 Budget

- (1) The management committee of a regional council must in each financial year prepare and compile a statement of its estimated income and expenditure for the following financial year. The management committee may in any financial year at any time prepare and compile a supplementary statement of its estimated income and expenditure for the financial year. The statements must be submitted by the management committee to the regional council for approval (section 36(1) of the RCA).
- (2) A budget and supplementary budgets are compiled in the form determined by the Minister and must at least specify the following:
 - (a) The different revenue sources and the expected revenue from each source
 - (b) According to the arrangements required by the Minister, the different programmes and different projects in the programmes for the purposes of which money is intended to be applied, and the estimated expenditure

in respect of each such programme and project (section 36(2) of the RCA).

- (3) A regional council may, until it has approved the budget and if required, until the Minister has authorised the budget, but for a period of not more than 3 months after the commencement of the financial year in question, authorise in respect of that financial year the application of amounts in relation to any matter in respect of which there was an approval and an authorisation in the previous financial year. The total amount so applied may not at any time exceed an amount equal to 25 percent of the total amount appropriated for the previous financial year (section 36(3) of the RCA).

C.3.4.5 Application of funds

- (1) A regional council may not apply its money otherwise than in accordance with an approval by council and, if required, the Ministerial authorisation (section 37(1) of the RCA).
- (2) A regional council may not incur expenditure in respect of which an amount of money has been appropriated and which relates to revenue derived from the Government of Namibia, unless it has obtained the prior authorisation of the Minister (section 37(2) of the RCA).
- (3) For purposes of obtaining the authorisation, the regional council must submit the budget to the Minister together with any statement, document or information required by the Minister (section 37(3) of the RCA).
- (4) The Minister authorises the expenditure if the Minister is satisfied that the amount appropriated in respect of the expenditure has been appropriated in accordance with the conditions imposed in respect of the accrual of the revenue (section 37(4) of the RCA).
- (5) A regional council may, with the approval of the Minister, apply an amount for a purpose for which no provision was made in a budget or supplementary budget or for the purpose of a programme or project for which insufficient provision was made in the budget or supplementary budget. The amount must be appropriated by the council before the end of the financial year in which its application has

been approved. A regional council may, unless the Minister directs otherwise, apply any saving under a particular programme for the purpose of another programme on the budget or supplementary budget, or a particular project in a programme on the budget or supplementary budget for the purposes of another project in the same programme (section 37(5) of the RCA).

- (6) The Minister may at any time, after consultation with the regional council, withdraw or suspend for a particular period any authorisation granted for the expenditure of a particular amount in so far as the amount has not yet been expended (section 37(6) of the RCA).

C.3.4.6 Auditing of accounting records

- (1) The chief regional officer must keep accounting records, which are necessary to reflect the transactions and financial state of affairs of the regional council (section 39(1) of the RCA).
- (2) The accounting records of a regional council and its financial statements must be audited by the Auditor-General (section 38 of the RCA).

C.3.4.7 Power to determine charges

- (1) A regional council has the power to determine by notice in the Government Gazette the charges, fees and other moneys payable in respect of any service rendered by the regional council in terms of the RCA or pursuant to the regulation and control of any matter under the RCA (section 28(1)(nA) of the RCA).
- (2) A regional council may not delegate its power to determine rates, charges, fees or other moneys that may be levied in terms of the RCA (section 29(1)(c) of the RCA).
- (3) The requirement to determine by notice in the Government Gazette does not apply to a charge, fee or other moneys payable in respect of an electricity service, amenity, facility or matter, if the charge, fee or other moneys appear in its schedule of approved tariffs, if the regional council holds an electricity licence, but subject to the following requirements:

- (e) The regional council must visibly display the charges, fees or moneys at the place where payment thereof are made at its offices
- (f) The council must provide the amount of the charge, fee or moneys to any person requesting it (proposed section 42(2) of the EA).

C.3.4.8 Surcharges

A regional council is entitled to levy a charge against its customers in accordance with the manner determined by the ECB and on the following conditions:

- (c) The surcharge and the amount thereof, including interest of late payments, and the duration thereof, must be approved by the ECB
- (d) The surcharge must be reflected on the invoice to the customer against whom it is levied by the licensee who is responsible to supply electricity to the customer
- (e) The ECB may distinguish between different regional councils or between different classes of regional councils and different amounts of surcharges may be approved
- (f) The purpose of the surcharge is to provide additional income to the relevant council for the purposes of covering the expenses of services to be rendered by the council and for this purpose the ECB must determine which services may be taken into consideration and the methodology of calculation of the surcharge
- (g) A customer is liable towards the council for the surcharge despite the fact that a licensee who is not the council is collecting the surcharge
- (h) The collecting licensee must collect and pay the surcharge to the council concerned in accordance with the manner determined by the ECB or, in the absence of a determination, an agreement reached between the parties. The determination or agreement must include the period within which the surcharge must be paid over to the council and the interest on arrear payments
- (i) The surcharge is not subject to any form of taxation (proposed section 32C of the EA).

C.3.5 Discussion of matters of public interest

- C.3.5.1 The chairperson of a regional council may, if the chairperson deems it fit, and must, upon a request in writing signed by at least 10 percent of the voters registered in the region, convene a meeting of the council to which the public is invited by public notice in a newspaper circulating in the region and such other

manner calculated to reach as many members of the public as possible for purposes of discussion of a matter of public interest set out in the request, on a date and time and public place in the region determined by the chairperson (section 41(1) of the RCA).

- C.3.5.2 The costs incurred in convening the meeting are paid out of funds of the regional council (section 44(3) of the RCA)

C.3.6 Commercialisation

On 5 March 2001, the Minister of Regional and Local Government and Housing published regulations under the RCA to regulate the commercialisation of services rendered, or duties or functions exercised or carried out, by regional councils. The description of the regulatory framework for commercialisation relates to the conditions for commercialisation, the form and manner of commercialisation, the alienation or encumbrance of shares and assets, and the pooling of resources, services and property, the amendment or alteration of the statutes and articles of association, the trust deed, the shares or interest structure, or the nature of operations of the company conducting the commercialised business, the audit of accounting records and financial statements of the commercialised business, members or staff members of the council not to be employed by the company, general matters and regional electricity distribution.

C.3.6.1 Conditions for commercialisation

- (1) A regional council may commercialise any service rendered, or duty exercised or function carried out by the council.
- (2) The commercialisation is subject to the prior written approval of the Minister on the conditions imposed by the Minister (regulation 2 of the CRs).

C.3.6.2 Form and manner of commercialisation

- (1) A regional council may commercialise a service, function or duty by means of the acquisition of all the shares in a company registered or to be registered in terms of the Companies Act, 1973, or the registering of a company of which the council is the sole shareholder.

- (2) The council may further transfer and make over in writing to the company the power and authority to render, exercise or carry out the service, duty or function to enable the company to render, exercise or carry out the service, function or duty (regulation 3 of the CRs).

C.3.6.3 Alienation or encumbrance of shares and assets, and pooling of resources, services and property

- (1) A regional council may not alienate, encumber or dispose of any shares owned by it in, or any of the assets of, or the council's interest in, a company conducting a commercialised business, without the prior written approval by the Minister, subject to the conditions imposed by the Minister in the approval, granted after consultation with the Minister of Trade and Industry.
- (2) The council may pool any of its resources, services or property in a company conducting a commercialised business.
- (3) The following persons may not obtain any shares or interest in a company conducting a commercialised business without the prior written approval of the regional council concerned, which approval may only be granted after consultation with the Minister:
- (a) A member of the regional council
 - (b) A staff member of the council
 - (c) A person who is related to the member or staff member
 - (d) A person who is a member of the household of the member or staff member
 - (e) A person with whom the member or staff member is a partner in a customary union
 - (f) A person who is a partner, agent or business associate of the member or staff member (regulation 4 of the CRs).

C.3.6.4 Amendment or alteration of statutes and articles of association, trust deed, shares or interest structure, or nature of operations, of company conducting a commercialised business

- (1) The statutes and articles of association of a company conducting a commercialised business, must provide that, or must be amended to provide that, irrespective of the voting power of the regional council on the board of directors of the company, the statutes or articles of association may not be amended or the share structure altered, including the transfer of ownership in shares, or the nature of operations of the company conducting the commercialised business and the risks pertaining thereto, may not be changed without the prior written approval of the council.
- (2) The approval may only be granted in consultation with the Minister and the approval must be entered into the minutes of the company concerned (regulation 5 of the CRs).

C.3.6.5 Audit of accounting records and financial statements of commercialised business

- (1) The accounting records and financial statements of a joint business venture is subject to audit by the Auditor-General.
- (2) The company must submit to the Minister and to the regional council concerned copies of the audited accounting records and financial statements, together with a report by the Auditor-General relating to the audit conducted within a period of 30 days after the completion of the audit (regulation 6 of the CRs).

C.3.6.6 Member or staff member of council not to be employed by company

- (1) A company conducting a commercialised business may not employ a member or staff member of the regional council.
- (2) A staff member may resign from the council in order to take up employment with the company (regulation 7 of the CRs).

C.3.6.7 General

A regional council may acquire or register a company for the purpose of conducting a commercialised business in competition or in conflict with its own operations, if it serves to improve the efficiency or effectiveness of its own operations (regulation 8 of the CRs).

C.3.6.8 Regional electricity distribution

The provisions of the RCA regarding commercialisation and any regulations in connection therewith, do not apply to an agreement for the establishment of a RED company (proposed section 32A(4) of the EA).

C.3.7 Joint business venturing

On 5 March 2001, the Minister of Regional and Local Government and Housing published regulations under the RCA to regulate joint business venturing among the different levels of government in Namibia. The description of the regulatory framework for joint business venturing relates to the conditions for entry into joint business ventures, the form of joint business ventures, the alienation, encumbrance or disposal of shares and assets, and the pooling of resources, services and property, the acquisition of shares or other interest in a joint business venture by members or staff members of council, representation of council on the board of directors or board of trustees, the amendment or alteration of the articles of association and statute, the trust deed, the share or interest structure or the nature of operations of the joint business venture, members or staff members of council not to be employed by the joint business venture, the audit of accounting records and financial statements of the joint business venture, general matters and regional electricity distribution.

C.3.7.1 Conditions for entry into joint business venture

- (1) A regional council may enter into a joint business venture with the Government (which includes a Ministry, a regional council, a local authority council, a parastatal or a non-governmental organisation) for the purposes of exercising, performing or carrying out its statutory powers, functions or duties.
- (2) The joint business venture must be aimed at promoting economic development and employment creation within the region or supplementing the funds of the council.

- (3) The entry into a joint business venture by a regional council is subject to the prior written approval of the Minister on the conditions imposed by the Minister (regulation 2 of the JBVRs).

C.3.7.2 Form of joint business venture

- (1) For the purpose of establishing the joint business venture, the regional council may take up shares in an existing company registered, or in a company to be registered, in terms of the Companies Act, 1973.
- (2) Alternatively, it may accept the position of beneficiary of the trust established.
- (5) Alternatively, it may enter into an agreement with the Government relating to the joint business venture (regulation 3 of the JBVRs).

C.3.7.3 Alienation, encumbrance or disposal of shares and assets, and pooling of resources, services and property

- (1) A regional council may not alienate or encumber any shares owned by it in a joint business venture.
- (2) It may not encumber or dispose of its assets or other interest therein without the prior written approval of the Minister, subject to the conditions imposed by the Minister in the approval, granted after consultation with the Minister of Trade and Industry. The approval must specify the purchaser or the beneficiary and the relevant shares or assets.
- (3) A regional council may pool in a joint business venture any of its resources, services or property. This may be done subject to the conditions imposed by the Minister in the initial approval (regulation 4 of the JBVRs).

C.3.7.4 Acquisition of shares or other interest in joint business venture by members or staff members of council

- (1) The following persons may not buy, accept, receive or otherwise acquire any shares or other interest in a joint business venture:

- (a) A member of the regional council
 - (b) A staff member of the council
 - (c) A person who is related to the member or staff member
 - (d) A person who is a member of the household of the member or staff member
 - (e) A person with whom the member or staff member is a partner in a customary union
 - (f) A person who is a partner, agent or business associate of the member or staff member.
- (2) The above excludes payments relating to director's fees or member's fees, or payment for services rendered with the written approval of the council (regulation 5 of the JBVRs).

C.3.7.5 Representation of council on board of directors or board of trustees

The representation of a regional council on the board of directors of a company or a board of trustees of a trust, in relation to the total representation on the board concerned, must be commensurate to the ratio which the monetary value of the input by the council in the joint business venture bears to the monetary value of the total shareholder's investment in the venture (regulation 6 of the JBVRs).

C.3.7.6 Amendment or alteration of articles of association and statute, trust deed, share or interest structure or nature of operations of joint business venture

- (1) The statutes and articles of association of a company or the trust deed of a trust must provide that, irrespective of the voting power of the regional council on the board of directors or at any meeting of the trustees, the statutes or articles of association or the trust deed may not be amended and the share or interest structure altered, including the transfer of ownership in shares, or the nature of operations of the joint business venture and the risks pertaining thereto, may not be changed without the prior written approval of the council.
- (2) The approval may only be granted in consultation with the Minister and the approval must be entered into the minutes of the joint business venture concerned (regulation 7 of the JBVRs).

C.3.7.7 Members or staff members of council not to be employed by joint business venture

- (1) A joint business venture may not employ a member or staff member of a regional council.
- (2) A staff member may resign from the council in order to take up employment with a joint business venture (regulation 9 of the JBVRs).

C.3.7.8 Audit of accounting records and financial statements of joint business venture

- (1) The accounting records and financial statements of a joint business venture is subject to audit by the Auditor-General.
- (2) The joint business venture must submit to the Minister and to the regional council concerned copies of the audited accounting records and financial statements, together with a report by the Auditor-General relating to the audit conducted within a period of 30 days after the completion of the audit.
- (3) The above requirement does not prevent a joint business venture, which is a company, to appoint its own auditors as required by the Companies Act, 1973 (regulation 8 of the JBVRs).

C.3.7.9 General

A regional council may enter into a joint business venture for the purpose of conducting a joint business venture in competition or in conflict with its own operations, if it serves to improve the efficiency or effectiveness of its own operations (regulation 10 of the JBVRs).

C.3.7.10 Regional electricity distribution

The provisions of the RCA regarding joint business ventures and any regulations in connection therewith, do not apply to an agreement for the establishment of a RED company (proposed section 32A(4) of the EA).

PART C: REPORT

Chapter 4

FRAMEWORK FOR RED FORMATION

The discussion of the regulatory framework for the establishment and operation of the Erongo Regional Electricity Distribution Company (“Erongo RED Company”) is limited to a discussion of the Electricity Act, 2000, (“EA”), the Electricity Regulations: Administrative, 2000, (“ERs: Admin”) and their proposed amendments, the proposed Electricity Regulations: Economic (“ERs: Econ”) and the proposed Electricity Regulations: Technical (“ERs: Tech”).

The description of the regulatory framework for RED formation relates to the duty to obtain a licence, the application for a licence and the advertisement, consideration of the application, the duration and renewal of licences, the conditions of a licence, the transfer of a licence, appeals, the schedule of approved tariffs, the revision thereof and other charges by licensees, the transmission and distribution of electricity, the reduction or discontinuation of supply, the cancellation or suspension of a licence, the permission to operate under the licence of a licensee, the licensee’s powers of inspection, limitation of liability, the ownership of powerlines, meters and other apparatus, ring-fencing and accounting, allowable assets, revenue and costs, common accounting basis, quality of service, quality of supply, operating procedures of a licensee, information requirements regarding access to distribution and transmission networks, conditions of supply and the responsibilities of a customer in connection with electrical installations.

C.4.1 Duty to obtain a licence

C.4.1.1 A person who wishes to establish or carry on an undertaking for the generation, transmission, supply, trading, distribution, importation or export of electricity, must hold a licence that authorises the particular activity (proposed amended section 17(1) of the EA).

C.4.1.2 A separate licence is required for each activity (section 17(2) of the EA).

C.4.1.3 The word “distribution”, in relation to electricity, means the conveyance of electricity through a distribution system, which consists wholly or mainly of

medium and low voltage networks, to a customer (proposed amended definition in section of the EA).

- C.4.1.4 The word “supply”, in relation to electricity, means the delivery of electricity to a customer as a commodity (proposed amended definition in section 1 of the EA).
- C.4.1.5 The word “customer” means a person to whom electricity is delivered by a licensee, and includes a consumer (proposed amended definition in section 1 of the EA).
- C.4.1.6 The word “consumer” means an end user of electricity who consumes the electricity (proposed new definition in section 1 of the EA).

C.4.2 Application for licence

- C.4.2.1 An application for the issue of a licence must be submitted to the ECB (section 18(1) of the EA).
- C.4.2.2 A non-refundable application fee of N\$500 is payable on submission of the application (regulation 3(1) of the ERs: Admin).
- C.4.2.3 The application must contain the following minimum information:
- (a) The name, country of registration and registration number and the postal and business address of the applicant
 - (b) Type of application, namely, issue, renewal, amendment or transfer
 - (c) Type of activity, namely, generation, transmission, supply, trading, distribution, importation or export
 - (d) In the case of application for the issue 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 ECB
- (v) Other information deemed necessary by the ECB 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
- (f) An outline of the intended business and operational plan, unless the plan has already been submitted during a previous application and has not changed, in which case the 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
- (h) The proposed advertisement
- (i) Other particulars required by the ECB (regulation 3(2) of the ERs: Admin).

C.42.4 The application must be advertised in the form approved by the ECB, in at least one national or one local newspaper. The advertisement must contain the following particulars:

- (a) The name, country of registration and registration number and the postal and business address of the applicant
- (b) Type of application, namely, issue, renewal, amendment or transfer
- (c) Type of activity, namely, generation, transmission, supply, trading, distribution, importation or export
- (d) In the case of an application for the issue of a licence, the map showing the proposed location where the applicant intends to erect or alter plant.

C.4.2.5 The advertisement must further list the following information and indicate clearly the physical address where the complete information can be inspected during normal business hours:

- (a) The technical design and its surrounding electrical system, which the applicant intends to erect or alter

- (b) The area within which the applicant intends to carry out the activities to be authorised under the licence
 - (c) The net present value of the proposed plant and any alternative plants
 - (d) Other information deemed necessary by the ECB regarding the plant and design.
- C.4.2.6 A copy of the newspaper in which the application was advertised must be submitted to the ECB within 14 days of publication (regulation 4 of the ERs: Admin).
- C.4.2.7 Objections against an application must be lodged with the ECB within 14 days after the date of publication of the advertisement (regulation 5(1) of the ERs: Admin).
- C.4.2.8 A complete copy of any objection received by the ECB must be provided to the applicant within 7 days of the objection being lodged (regulation 5(2) of the ERs: Admin).
- C.4.2.9 The ECB must consider the application and any objection thereto, and may for that purpose arrange for a public hearing of the application at a time and place of which at least 14 days' notice must be given to the applicant and every objector (section 18(3) of the EA).
- C.4.2.10 If no public hearing is to be held, the ECB must afford the applicant at least 14 days after the closing date for objections to respond to the objection (regulation 5(4) of the ERs: Admin).
- C.4.2.11 Not later than 30 days after conclusion of a hearing or, if no hearing was arranged, 30 days after the expiry of the period allowed for the submission of objections, the ECB must submit the application and any objection thereto, together with its recommendations thereon, to the Minister, including the conditions which the ECB recommends should be imposed in relation to the licence (section 18(5) of the EA).
- C.4.2.12 If the application is granted by the Minister, the ECB must issue the licence. The licence must specify the particular authorised activity and defined the area in respect of which the licence is issued. It must further contain the conditions

imposed in relation to the licence and, if applicable, the schedule specifying the approved tariffs that may be charged by the licensee (proposed amended section 18(8) of the EA).

- C.4.2.13 A non-refundable fee of N\$1000,00 is payable upon the issue of a licence (regulation 6 of the ERs: Admin).

C.4.3 Consideration of application

- C.4.3.1 The Minister, in considering an application, and the ECB, in making its recommendation to the Minister on the application, must give due consideration to matters or activities that 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 granting of the application (section 19(1) of the EA).

- C.4.3.2 To this end, the Minister or the ECB 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 the 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 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 is in the public interest (section 19(2) of the EA).

C.4.4 Duration and renewal of licences

Unless sooner cancelled, a licence remains valid for the period determined by the Minister and stated in the licence, which period may not exceed 50 years (section 21 of the EA).

C.4.5 Conditions of a licence

The conditions of a licence may include provisions relating to the following:

- (a) The provision by a licensee of institutional support, transfer of technology and the funding thereof on a specified basis
- (b) The obligations of the licensee, upon cessation of the activities carried on under the licence, with regard to the destruction, dismantling or removal of buildings, walls, installations, equipment, structures, waste dumps or other facilities erected or used for purposes of, or in connection with, those activities, whether on the premises of the licensee or elsewhere, and the restoration of any land disturbed by the activities
- (c) The furnishing by the licensee of acceptable security for compliance with any condition contemplated in paragraph (b) above
- (d) Prohibitions relating to the provision of electricity, including prohibitions on the trading of electricity, unless the electricity concerned is obtained under the conditions and from the person or persons determined in the licence, or sold on the conditions and to the person or persons so determined (proposed amended section 22(2) of the EA).

C.4.6 Transfer of licence

C.4.6.1 A licence may not be transferred or ceded to another person, unless the Minister, on recommendation of the ECB, has granted approval therefor (section 23(1) of the EA).

C.4.6.2 An application for the transfer of a licence is made by the licensee and proposed transferee jointly and procedure applicable to an application for the issue of a licence, likewise applies (section 23(2) to (8) of the EA).

C.4.6.3 The name, country of registration and registration number and the postal and physical address of the transferee must also be included in the application (regulation 3(2)(a) of the ERs: Admin).

C.4.7 Appeals

C.4.7.1 The following persons may appeal against a decision of the ECB to the Minister:

- (a) A licensee
- (b) A customer or customers purchasing at least 100 megawatt-hours of electricity per annum
- (c) Any number of customers exceeding 10 (proposed amended section 34(1) of the EA).

C.4.7.2 An appeal must be lodged within 30 days after the decision of the ECB has been made known or otherwise brought to the attention of the appellant (section 34(2) of the EA).

C.4.7.3 On the lodging of an appeal, the operation or execution of the decision of the ECB is suspended pending the outcome of the appeal (regulation 8(9) of the ERs: Admin).

C.4.8 Schedule of approved tariffs, revision thereof and other charges by licensees

C.4.8.1 A licensee may not levy any charge against a customer other than in accordance with the tariffs specified in the schedule of approved tariffs (section 25(1) of the EA).

C.4.8.2 The ECB may, upon application by a licensee, revise the schedule of approved tariffs (section 25(2) of the EA).

C.4.8.3 The ECB may, in specific circumstances and on good cause shown, approve a deviation from the schedule of approved tariffs (section 25(3) of the EA).

- C.4.8.4 The following charges are not part of the schedule of approved tariffs but, if applicable, must be reflected on an application for approval or revision of a schedule of tariffs in the manner determined by the ECB:
- (a) The ECB levy
 - (b) The regional council and local authority surcharge (proposed section 25(5) of the EA).
- C.4.8.5 The ECB may exempt any cost or type of cost incurred in connection with the provision of electricity by a licensee from the above requirements (proposed section 25(7) of the EA).
- C.4.8.6 A separate schedule of tariffs must be submitted for each prospective undertaking for which a licence is required. (proposed regulation 5A(1) of the ERs: Admin).
- C.4.8.7 When evaluating a schedule of tariffs for approval, the ECB takes the following factors into consideration:
- (a) Cost of supply
 - (b) Revenue requirement of the undertaking
 - (c) Affordability
 - (d) Price stability
 - (e) Equity and fairness
 - (f) Quality of supply and quality of service
 - (g) Cost reflectiveness
 - (h) Transparency of pricing
 - (i) Rate of return on the assets of the undertaking
 - (j) Past, current and future investment expenditures in relation to the undertaking
 - (k) Protection of consumer interests
 - (l) Non-discrimination among customers or classes of customers
 - (m) Efficiency measures
 - (n) Other factors deemed appropriate by the ECB, but then in an open and transparent manner (proposed regulation 6 of the ERs: Econ).

- C.4.8.8 The manner of structuring tariffs in the schedule of tariffs is determined by the ECB after consultation with the affected role players in the electricity industry (proposed regulation 7(2) of the ERs: Econ).
- C.4.8.9 Tariff components must be so included that the schedule of tariffs appropriately reflects the following main types of costs:
- (a) Demand related costs
 - (b) Energy related costs
 - (c) Shared customers related costs
 - (d) Customer specific costs (proposed regulation 7(1) of the ERs: Econ).
- C.4.8.10 In the interests of the economic and rational use and consumption of electricity, and wherever feasible, a licensee must:
- (a) Provide customers with the option of time of use tariffs for the variable energy component of the tariff that reflects the difference in the cost of supply in off-peak periods compared to standard and peak periods
 - (b) Ensure that the option and its structure is authorised in its schedule of tariffs before the option is offered to its customers (proposed regulation 7(3) of the ERs: Econ).
- C.4.8.11 A licensee levying surcharges must:
- (a) Distinguish the surcharges in its billing from the electricity tariffs it charges
 - (b) Indicate the surcharges in its billing in a transparent and understandable manner
 - (c) Recover the surcharges from customers (proposed regulation 8 of the ERs: Econ).
- C.4.8.12 A licensee that supplies electricity may include in its schedule of tariffs charges or tariffs for special pricing agreements (proposed regulation 9(1) of the ERs: Econ).
- C.4.8.13 The licensee may only conclude a special pricing agreement with a customer who complies with any of the following criteria:

- (a) The electricity costs of the customer represent a percentage that equals or exceeds the percentage of the total electricity costs of that customer which the ECB determines, and for this purpose the ECB must determine the manner in which costs must be determined and which costs may be taken into consideration
- (b) The electricity load factor of the customer equals or exceeds the percentage for the continuous period which the ECB determines
- (c) Other criteria determined by the ECB (proposed regulation 9(2) of the ERs: Econ).

C.4.8.14 Charges or tariffs agreed upon in a special pricing agreement become applicable only once the ECB has approved the charges or tariffs (proposed regulation 9(3) of the ERs: Econ).

C.4.9 Transmission and distribution of electricity

C.4.9.1 A licensee who is licensed to transmit or distribute electricity, must within its licensed area provide access to all existing and potential users of the transmission and distribution networks against payment of compensation at a rate included in the schedule of approved tariffs, except if a refusal is reasonably based on an insufficiency of technical availability of capacity (proposed amended section 28(1) of the EA).

C.4.9.2 Disputes as to whether there is an insufficiency of technical availability of capacity must be referred to the ECB for a final decision (proposed section 28(2) of the EA).

C.4.10 Reduction or discontinuation of supply

C.4.10.1 A licensee may not, except for causes beyond the control of the licensee, reduce or discontinue the supply of electricity to a customer, except if the customer is declared insolvent, if the customer has failed to pay any fees, charges or other moneys due, if the customer has failed to comply with the conditions of supply or if it is so prescribed by regulation (proposed amended section 29 of the EA).

C.4.11 Cancellation or suspension of licence

The ECB may suspend or cancel a licence in certain circumstances (section 30 of the EA).

C.4.12 Permission to operate under the licence of a licensee

The Minister may, upon recommendation of the ECB, grant permission to a person to operate an undertaking under the licence of a licensee (proposed section 32B of the EA).

C.4.13 Licensee's powers of inspection

C.4.13.1 A licensee may at all reasonable times enter premises to which electricity is or has been supplied by the licensee for the following purposes:

- (a) Inspecting, testing, repairing or maintaining a line, meter, fitting or apparatus of the licensee
- (b) Ascertaining the quantity of electricity consumed
- (c) Removing lines, meters, fittings or apparatus if the supply is no longer required (section 36 of the EA).

C.4.13.2 The entry of premises is subject to the following:

- (a) The licensee must, if possible, make suitable arrangements with the occupant of the premises for entry before entering the premises
- (b) The licensee must at the request of any person in charge of the premises, exhibit the written authorisation to enter the premises
- (c) The licensee must adhere to all reasonable security measures, if any, of the owner or occupant of the premises (section 36(2) of the EA).

C.4.14 Limitation of liability

No person is liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty in terms or by virtue of the EA, or in respect of anything that may result therefrom (proposed section 32B of the EA).

C.4.15 Ownership of powerlines, meters and other apparatus

C.4.15.1 Power lines, meters, fittings, works or apparatus belonging to a licensee and lawfully placed or installed in or upon premises, whether or not fixed to any part of the premises:

- (a) Remain the property of and may be removed by the licensee
- (b) Are not subject to the landlord's hypothec for rent of the premises
- (c) Are not liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of the premises.

C.4.15.2 Adequate indication must be given on the premises that the licensee is the owner of the powerlines, meters, works or apparatus (section 37 of the EA).

C.4.16 Ring-fencing and accounting

C.4.16.1 Every licensed undertaking must be ring-fenced (proposed regulation 3(1) of the ERs: Econ).

C.4.16.2 A licensee must in respect of the licensed undertaking:

- (a) Keep ring-fenced accounting records
- (b) Prepare in a consistently uniform manner, in respect of each financial year, financial statements comprising the following:
 - (i) An income statement
 - (ii) A balance sheet
 - (iii) A cash flow statement
 - (iv) An asset register
 - (v) A value-added statement, but only where the statement is required in terms of a licence condition (proposed regulation 3(2) of the ERs: Econ).

C.4.16.3 The statements must be accompanied by by notes showing separately for each licensed undertaking and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision, which has been either charged from or to any

other undertaking, business or operations of the licensee, together with a description of that charge (proposed regulation 3(4) of the ERs: Econ).

C.4.17 Allowable assets, revenue and costs

The ECB may, with regard to the ring-fencing of licensed undertakings, make rules or issue guidelines in respect of different categories of licensees, pertaining to the following:

- (a) The revenue, costs, assets, liabilities, reserves and provisions deemed allowable as forming part of or emanating from the licensed undertaking
- (b) Any method or formula for allocating overhead expenses
- (c) A standardised asset valuation schedule (proposed regulation 4(1) of the ERs: Econ).

C.4.18 Common accounting basis

C.4.18.1 If a licensee is a company, the licensee must, in preparing its financial statements, comply with the provisions of the Companies Act, 1973, regarding accounting principles in the Statements of Generally Accepted Accounting Practice accepted and applied by the Institute of Chartered Accountants of Namibia (proposed regulation 5(2) of the ERs: Econ).

C.4.18.2 The ECB may prepare specific accounting guidelines or further detailed accounting rules for licensees, which rules are mandatory (proposed regulation 5(3) of the ERs: Econ).

C.4.19 Quality of service

C.4.19.1 A licensee must implement the necessary standards and procedures for the management of the minimum quality of service to customers.

C.4.19.2 These must relate to the following:

- (a) The processing of requests for the supply of electricity
- (b) Revenue management
- (c) Fault reporting process

- (d) Response times
- (e) Restoration times
- (f) The number and duration of planned and forced interruptions
- (g) The notice of planned interruptions
- (h) Customer complaints and queries
- (i) Customer education (proposed regulation 6 of the ERs: Tech).

C.4.20 Quality of supply

C.4.20.1 A licensee must implement the necessary standards and procedures for the management of the minimum quality of service to customers.

C.4.20.2 These must relate to the following:

- (a) Maintaining the voltage quality of supply within the limits specified in the ERs: Tech
- (b) Taking appropriate measures to rectify the voltage quality of supply as soon as practicable in the event of the licensee exceeding the limits so specified
- (c) Minimizing the number of voltage dips and ensuring that the total number of non-co-incidental voltage dips at the point of common coupling in any 12 consecutive months does not exceed the number of dips recommended by the ECB
- (d) Maintaining the frequency within the limits so specified
- (e) Limiting the unbalanced load drawn by customers
- (f) Limiting voltage harmonics, inter-harmonics and flicker on the electrical system (proposed regulation 8 of the ERs: Tech).

C.4.21 Operating procedures of licensee

C.4.21.1 A licensee must compile and implement electrical operating procedures for use within its licensed area (proposed regulation 9(1) of the ERs: Tech).

C.4.21.2 The operating procedures must be submitted to the ECB within 90 days of the date on which the licence has been granted to the licensee (proposed regulation 9(2) of the ERs: Tech).

C.4.22 Information requirements regarding access to distribution and transmission network

C.4.22.1 A licensee who is licensed to distribute or transmit electricity must, within the time frame determined by the ECB after consultation with the licensee concerned, prepare a statement in the form which the ECB approves, setting out the following:

- (a) The basis upon which charges for the provision of access to its distribution or transmission network will be levied
- (b) The charges for the provision of access containing information which will enable a licensee who is licensed to supply electricity to make a reasonable estimate of the charges to which it would become liable (proposed regulation 17(1) of the ERs: Tech).

C.4.22.2 The licensee must upon request provide a licensee who is licensed to supply electricity with the latest updated statement within a period of 30 days or the longer period which the ECB determines (proposed regulation 17(3) of the ERs: Tech).

C.4.22.3 Where the licensee and a licensee who is licensed to supply electricity cannot reach agreement regarding the provision of access to its distribution or transmission network, either licensee may refer the matter to the ECB for mediation (proposed regulation 17(6) of the ERs: Tech).

C.4.23 Conditions of supply and responsibilities of customer in connection with electrical installation

C.4.23.1 Part VI of the proposed ERs: Tech deals with general conditions of supply. The following matters are addressed:

- (a) Licensee's sole right to supply electricity from supply main
- (b) Contract of supply
- (c) Application for supply of electricity
- (d) Payment of deposit

- (e) Initial connection to supply main, increase of capacity and reconnection of supply
- (f) Resale of electricity by customer
- (g) Equipment to be provided by customer
- (h) Measurement of supply
- (i) Determination of quantity of electricity supplied
- (j) Estimation of consumption
- (k) Charges for rendering service of electricity supply
- (l) Payment for electricity upon amendment of charges
- (m) Payment of accounts
- (n) Objection to account rendered by licensee for electricity supplied
- (o) Safeguarding of metering installation and other equipment
- (p) Tampering or interference with or damage to metering installation or other equipment
- (q) Complete failure of meter to register supply
- (r) Testing of electricity meters
- (s) Repair or substitution of electricity meter or other equipment
- (t) Charges in case of improper use
- (u) Termination of contract of supply
- (v) Removal of material, plant and apparatus by licensee
- (w) Relocation of licensee's equipment on request of customer
- (x) Suspension of electricity supply
- (y) Power factor, phase balance and interference with other supplies
- (z) Reduction in supply
- (aa) Non-liability of licensee
- (bb) Temporary disconnection and reconnection
- (cc) Standby supply.

C.4.23.2 Part VII of the ERs: Tech deals with the responsibilities of customers in connection with electrical installations. The following matters are addressed:

- (a) Diagrams and specifications
- (b) Customer responsible for electrical installation
- (c) Fault on electrical installation
- (d) Connection of electrical installation to electricity supply.

PART C: REPORT

Chapter 5

CONCLUSION

[To be inserted.]