



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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#### OFFICE OF THE PRIME MINISTER

No. 127 ..... 2003

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 5 of 2003: Agricultural Bank of Namibia Act, 2003.

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# ACT

To provide for the Agricultural Bank of Namibia, its object, functions and powers; and to provide for incidental matters.

*(Signed by the President on 6 June 2003)*

## ARRANGEMENT OF SECTIONS

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#### **SCHEDULE - LAWS REPEALED OR AMENDED**

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

#### **PART I PRELIMINARY PROVISIONS**

##### **Definitions**

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

“activity related to agriculture” means the processing or marketing of food or natural fibers or any other activity declared as such by the Minister with the concurrence of the Minister responsible for agriculture by notice in the *Gazette*;

“Agribank” means Agribank referred to in section 3;

“Board” means the Board of the Agribank appointed in terms of section 7;

“borrower” means a person to whom the Agribank has advanced a loan;

“chairperson” means the chairperson of the Board appointed in terms of section 8(2);

“Chief Executive Officer” means the Chief Executive Officer of the Agribank appointed in terms of section 16;

“committee” means a committee established under section 12;

“member” means a member of the Board referred to in section 8;

“Minister” means the Minister responsible for finance; and

“vice-chairperson” means the vice-chairperson appointed in terms of section 8(2).

##### **Application of other laws**

- 2.** The Agribank is not subject to any law regulating banking institutions in Namibia.

#### **PART II AGRIBANK AND ITS OBJECT, FUNCTIONS AND POWERS**

##### **Agribank**

- 3.** The juristic person known as the Agricultural Bank of Namibia continues to exist under the name Agribank.

##### **Object of the Agribank**

- 4.** The object of the Agribank is to promote agriculture or activities related to agriculture by lending money -

- (a) to persons, which money is to be used in connection with agriculture or activities related to agriculture; and

- (b) to financial intermediaries, who or which in turn lend money to persons for the purposes contemplated in paragraph (a).

#### **Functions of the Agribank**

5. The functions of the Agribank are -

- (a) to advance money for the purposes referred to in section 4;
- (b) to provide such services as it may consider necessary relating to -
  - (i) the use of;
  - (ii) the accounting for; and
  - (iii) the lending to third persons of, and the security required for, money lent to a person under this Act; and
- (c) to lend money as an agent of the Government to persons under schemes created by contracts concluded under section 6(3).

#### **Powers of the Agribank**

6. (1) The Agribank may -

- (a) purchase, hire or otherwise acquire property;
- (b) sell, lease, let or otherwise deal with property acquired under paragraph (a);
- (c) make investments, either on its own or in conjunction with any person;
- (d) borrow money;
- (e) secure the payment of money, which has been borrowed by the Agribank, in any manner including the mortgaging and pledging of property;
- (f) make, draw, issue, execute, accept, endorse and discount promissory notes, bills of exchange and any other kind of negotiable or transferable instruments;
- (g) insure itself against risks, which it may incur;
- (h) engage under contract persons to supply such services as may be necessary to perform the functions of the Agribank or appoint agents;
- (i) pay gratuities and pensions and establish pension schemes in respect of its employees, and with the consent of the Minister, in respect of members of the Board;
- (j) subject to subsection (5), accept donations;
- (k) value immovable property provided to the Agribank as security;
- (l) inspect premises and the activities of a borrower for the purpose of establishing whether or not the borrower complies with conditions of a loan advanced by the Agribank to that borrower;

- (m) with the approval of the Minister, enter into contracts, or perform any act referred to in paragraphs (a) to (l), outside the Republic of Namibia.
- (2) The Agribank may -
- (a) advance loans to persons engaged in agriculture or in activities related to agriculture;
- (b) for the purposes of paragraph (a), conclude contracts with the persons referred to in that paragraph relating to -
- (i) security in respect of a loan;
- (ii) the manner of, and period for, the repayment of a loan;
- (iii) the interest payable in respect of a loan;
- (iv) records and returns to be submitted to the Agribank;
- (v) any other matters, which the Agribank considers necessary; and
- (c) make bursaries available to persons who are undergoing, or intend to undergo, studies in the field of banking, agriculture, or in a field of study related to agriculture, or rural development, or any other field of study determined by the Board.
- (3) The Agribank may conclude a contract with the Minister responsible for agriculture, or any other organ of the State represented by a minister, which creates an assistance scheme for the benefit of any specified class of persons.
- (4) The contract referred to in subsection (3) may provide for -
- (a) the transfer of money to the Agribank;
- (b) the administration by the Agribank of the money referred to in paragraph (a);
- (c) the purposes for which the money referred to in paragraph (a) may be utilised;
- (d) designated categories of persons, who may benefit from the money referred to in paragraph (a);
- (e) the kinds of security that the Agribank may accept from the persons referred to in paragraph (d);
- (f) the manner in which the risk for bad debts is allocated to one or more of the parties to the contract;
- (g) the interest payable in respect of loans advanced to the persons referred to in paragraph (d); and
- (h) any other matters on which the parties may agree.
- (5) For the purposes of subsection (1)(j), the Minister may determine the procedure and conditions in terms of which the Agribank may accept, dispose of, or otherwise deal with, donations referred to in that subsection.

**PART III**  
**MANAGEMENT AND CONTROL OF THE AGRIBANK**

**Board of the Agribank**

7. The Minister, with the concurrence of the Minister responsible for agriculture, must appoint a Board of the Agribank to be responsible for the policy, management and control of the affairs of the Agribank and which must exercise the powers and perform the functions and duties of the Agribank subject to this Act.

**Constitution of the Board**

8. (1) The Board referred to in section 7 consists of five members appointed on the basis of their professional knowledge and experience in relation to the functions of the Agribank, and out of those members one is a staff member in the Ministry of Agriculture, Water and Rural Development, who has been designated by the Minister responsible for agriculture.

(2) The Board, with the concurrence of the Minister, must appoint one member as chairperson and another member as vice-chairperson of the Board, who may not at the same time be in the full-time employment of the State.

(3) If the chairperson is for any reason unable to act, the vice-chairperson must exercise the powers, and perform the functions and duties, of the chairperson.

(4) The names of the persons appointed as members in terms of subsection (1) must be made known by notice in the *Gazette*.

**Disqualification from appointment as member of Board**

9. A person is not eligible for appointment in terms of section 8, if the person -
- (a) is not a Namibian citizen or a holder of a permanent residence permit issued under the laws relating to immigration;
  - (b) is an unrehabilitated insolvent;
  - (c) has at any time been convicted of theft, fraud, forgery or uttering, perjury, an offence under any law on corruption or any other offence involving dishonesty and has been sentenced to imprisonment without the option of a fine;
  - (d) is under the age of 21 years;
  - (e) is a member of the National Assembly or the National Council or is a director of a banking institution; or
  - (f) has a financial or other interest likely to prejudicially affect the exercise of his or her powers, or the performance of his or her functions and duties, as a member.

**Term of office and vacation of office**

10. (1) Subject to subsections (3) and (4), a member holds office for a term of three years and is, subject to subsection (2), eligible for re-appointment.

(2) Notwithstanding subsection (1), a member may not serve for longer than three consecutive terms at a time.

(3) The office of a member of the Board becomes vacant, if the member -

- (a) becomes subject to a disqualification referred to in section 9;
- (b) resigns his or her office by written notice to the Minister;
- (c) is under any law declared to be of unsound mind;
- (d) is absent from three consecutive meetings of the Board without the leave of the chairperson; or
- (e) is removed from office under subsection (4).

(4) The Minister may remove a member from office after giving the member a reasonable opportunity to be heard, if the member is -

- (a) mentally or physically incapable of efficiently performing his or her duties as a member; or
- (b) guilty of conduct that renders him or her unfit to serve as a member.

(5) If a member dies or his or her office becomes vacant in terms of subsection (3), the Minister must appoint a person, with due regard to section 8(1), to fill that vacancy for a term of three years.

### **Meetings of Board**

11. (1) The Board must meet at least four times in a year.

(2) The Minister must determine the time and place of the first meeting of the Board and thereafter the Board must meet at such times and places, and in a manner, as the Board may determine.

(3) The chairperson or, in his or her absence, the vice-chairperson, must preside at a meeting of the Board and, if both the chairperson and vice-chairperson are absent from, or for any other reason unable to preside at, a meeting of the Board, the members present at a meeting must elect one person from among their number to be chairperson at that meeting.

(4) The chairperson or, in his or her absence, the vice-chairperson -

- (a) may at any time and of his or her own accord convene a special meeting of the Board to be held at a time and place, and in the manner, determined by him or her; and
- (b) must convene a special meeting, on a written request of the Chief Executive Officer or two other members, to be held as soon as reasonably possible, but not later than 14 days from the date of receipt of such request and at a place determined by the chairperson or vice-chairperson, as the case may be.

(5) The quorum for a meeting of the Board is three members.

(6) Subject to subsection (8), a decision of the majority of the members present at a meeting of the Board constitutes a decision of the Board and the person presiding at

a meeting has, in addition to his or her deliberative vote, a casting vote in the case of an equality of votes.

(7) A decision taken by the Board, or an act performed under the authority of the Board, is not invalid by reason only of a vacancy on the Board or of the fact that any person not entitled to sit as a member sits as such a member at the time when the decision authorised is taken or the act is authorised, if the decision is taken, or the act is authorised, by the majority of the members who are present at the time and entitled to vote.

(8) Notwithstanding subsection (6), a written resolution not passed at a meeting of the Board, but signed by the majority of the members, must -

- (a) be considered to be a decision of the Board as if it had been passed at a meeting of the Board duly convened and constituted; and
- (b) be recorded in the minutes of the first ensuing meeting of the Board.

(9) The person who presides at a meeting of the Board must cause a written record of that meeting to be kept.

#### **Committees of the Board**

12. (1) The Board may establish committees for the purpose of -

- (a) advising the Board in the exercise of its powers and the performance of its functions and duties;
- (b) exercising powers, and performing functions and duties, as determined by the Board.

(2) The Board may appoint members of the Board and other persons as members of a committee, but at least one member of a committee must be a member of the Board.

(3) The Board must designate one member of a committee, who must also be a member of the Board, as chairperson of that committee.

(4) The chairperson of a committee, which exercises a power or performs a function or duty of the Board, must table any finding of that committee at a Board meeting.

#### **Remuneration and allowances of members of Board and committees**

13. (1) Subject to subsection (2), a member of the Board or of a committee, who is not in the full-time employment of the State, must be paid out of the funds of the Agribank such remuneration and allowances as the Minister may determine.

(2) The Minister may determine different conditions of service in respect of the remuneration and allowances of members who perform different duties.

#### **Disclosure of interests**

14. (1) A member of the Board must declare in writing to the Minister the nature and full particulars of all professional or financial interests, which the member -

- (a) has at the time when he or she is appointed; or
- (b) acquires while he or she is serving as a member.

- (2) A member of the Board or of a committee may not -
- (a) take part in any consideration or discussion of;
  - (b) exercise a vote on; or
  - (c) lobby any other member in respect of, or discuss with a member,

a matter before the Board or a committee, in which the member has a professional or financial interest.

#### **Delegation of powers and assignment of duties**

**15.** (1) The Board may, subject to the conditions it may determine, delegate any of its powers, or assign any of its functions or duties, to the Chief Executive Officer.

(2) The Chief Executive Officer may, with the approval of the Board, re-delegate any of his or her powers, or assign any of his or her functions or duties, to any other employee of the Agribank.

(3) The Board, or the Chief Executive Officer, is not divested of any power delegated, or function or duty assigned, under subsection (1) or (2).

#### **Chief Executive Officer**

**16.** (1) The Board, with the concurrence of the Minister and the Minister responsible for agriculture, must appoint a suitably qualified person as Chief Executive Officer of the Agribank, on such conditions of service as the Board may determine.

(2) The Chief Executive Officer must conclude a written agreement with the Board in which he or she undertakes to comply with performance criteria specified in that agreement, and which the Board may determine in consultation with the Minister responsible for agriculture.

(3) Subject to such policy and directions as the Board may determine, the Chief Executive Officer -

- (a) is responsible for the day-to-day management and administration of the Agribank;
- (b) is the accounting officer of the Agribank;
- (c) is responsible for the supervision of, and control over, the other employees of the Agribank appointed under section 17;
- (d) must exercise such powers as are delegated, and perform such functions and duties as are assigned, to him or her by the Board.

(4) The Chief Executive Officer -

- (a) is appointed for a term of 5 years and may on the expiration of that term be appointed for additional terms not exceeding 5 years each;
- (b) may attend meetings of the Board, but is not entitled to vote.

(5) The Board, with the concurrence of the Minister, must determine the remuneration and allowances of the Chief Executive Officer.

(6) If the Chief Executive Officer is for any reason unable to perform his or her duties, the Board must, after consultation with the Minister and the Minister responsible for agriculture, appoint a suitably qualified person to act as Chief Executive Officer for the time being.

(7) The Board may at any time, on reasonable grounds and with the concurrence of the Minister and the Minister responsible for agriculture, remove the Chief Executive Officer from office after giving the Chief Executive Officer a reasonable opportunity to be heard.

#### **Other employees of the Agribank**

17. (1) The Agribank may appoint other employees as it may consider necessary to assist the Chief Executive Officer in the performance of his or her functions.

(2) The Board, on the recommendation of the Chief Executive Officer, must determine the remuneration and other conditions of service of employees appointed under subsection (1).

### **PART IV FINANCIAL PROVISIONS**

#### **Funds of the Agribank**

18. (1) The funds of the Agribank consist of -

- (a) the capital which has vested in the Agribank immediately before the date of commencement of this Act;
- (b) any money, including interest, received by means, or in respect of the repayment, of loans advanced under this Act;
- (c) any interest, or dividends, derived from joint ventures or any other investments under this Act;
- (d) any other money accruing to the Agribank from any other source.

(2) Subject to subsection (3), the Agribank may not accept deposits from members of the public.

(3) Notwithstanding subsection (2), the Minister, after consultation with the Governor of the Bank of Namibia, may specify by notice in the *Gazette* persons, or categories of persons, from whom the Agribank may accept deposits.

(4) The Agribank may invest money, which is not required for immediate use, in a manner determined by the Board.

#### **Financial year**

19. The financial year of the Agribank starts on 1 April and ends on 31 March the following year.

#### **Auditing and accounting**

20. (1) The Chief Executive Officer must -

- (a) cause to be kept during a financial year, full and proper accounts and records of -

- (i) all the money received, or expended, by the Agribank; and
  - (ii) all assets, liabilities, financial transactions and other affairs of the Agribank;
- (b) as soon as possible, but not later than six months after the end of a financial year, cause a statement of the income and expenditure of the Agribank for that financial year, and a balance sheet of its assets and liabilities as at the end of that financial year, to be prepared;
- (c) provide the Board or the Minister, or the Minister responsible for agriculture, with such particulars as it, or he or she, may from time to time require in connection with the financial or other affairs of the Agribank.
- (2) The Auditor-General must -
- (a) audit the accounts and records of the Agribank referred to in subsection (1)(a) and (b);
  - (b) prepare a report after each financial year on the audit referred to in paragraph (a).

#### **Annual report**

21. (1) The Board must as soon as possible, but not later than six months after the end of a financial year, submit to the Minister an annual report containing -

- (a) an audited balance sheet of the assets and liabilities of the Agribank;
- (b) an audited statement of the income and expenditure of the Agribank;
- (c) an audited statement of the source and application of the funds of the Agribank;
- (d) a report on the affairs and activities of the Agribank during the preceding financial year;
- (e) such other information as the Board, the Minister or the Minister responsible for agriculture may consider necessary.

(2) The Minister must lay the annual report referred to in subsection (1) on the Table of the National Assembly within 30 days of the receipt of that report, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within 30 days of the commencement of its next ordinary session.

#### **Performance agreement**

22. (1) The Board must submit a draft performance agreement to the Minister and the Minister responsible for agriculture at the beginning of each financial year.

(2) In the draft performance agreement referred to in subsection (1), the Board must set out -

- (a) the programmes, which it intends to carry out during the financial year concerned; and
- (b) the measurable targets, which it intends to reach by means of those programmes.

(3) The Minister, with the concurrence of the Minister responsible for agriculture, must within a period of two months from the date of receipt of the draft performance agreement referred to in subsection (1) -

- (a) approve the draft performance agreement; or
- (b) with the concurrence of the Board, amend the draft performance agreement.

## PART V GENERAL PROVISIONS

### Limitation of liability

23. A member of the Board or of a committee, the Chief Executive Officer, or any other employee of the Agribank, is not liable in respect of anything done, or omitted to be done, in good faith in the exercise of any power, or the performance of any function or duty, under this Act.

### Preservation of secrecy

24. A member of the Board or of a committee, the Chief Executive Officer, or any other employee of the Agribank, may not disclose to any other person confidential information, which the member, the Chief Executive Officer or other employee, has acquired in the exercise of his or her powers, or the performance of his or her functions or duties, under this Act, except -

- (a) if the disclosure of such information is necessary for the purpose of the exercise of his or her powers, or the performance of his or her functions or duties, under this Act; or
- (b) if required to disclose that information by a court of law or under any law.

### Restriction on the use of the name of the Agribank

25. Except with the approval of the Agribank, a person may not carry on business under the name "Agricultural Bank of Namibia" or "Agribank" or under a name that so closely resembles one or both such names so as to signify a connection between that business and the Agribank.

### Liquidation

26. The Agribank may not be liquidated, except by an Act of Parliament.

### Rules by Board

27. The Board may make rules in relation to -
- (a) the good management of the affairs of the Board and the effective execution of the functions of the Agribank;
  - (b) the holding of meetings of the Board;
  - (c) the manner in which meetings of any committee must be convened, the procedure at, and the quorum for, the meetings and the manner in which minutes of those meetings must be kept;
  - (d) generally any matter that the Board may consider necessary or expedient to achieve the objects of this Act.

**Offences and penalties**

28. A person who contravenes, or fails to comply with, the provisions of section 14, 24 or 25 is guilty of an offence and is on conviction liable to a fine not exceeding N\$ 8000 or to imprisonment not exceeding two years or to both such fine and such imprisonment.

**Transitional provisions**

29. (1) A person, who was -
- (a) a member of the Board or of a committee; or
  - (b) the Chief Executive Officer,

immediately before the date of commencement of this Act, continues to be such a member, or the Chief Executive Officer, as the case may be, until the term of that member, or of the Chief Executive Officer, lapses.

(2) The employees of the Agribank immediately before the date of commencement of this Act, other than the Chief Executive Officer, continue to be employees of the Agribank on the date of commencement of this Act and are deemed to be employees appointed under section 17(1).

(3) The conditions of service of employees referred to in subsection (2) as of the date of commencement of this Act may not be less favourable than the conditions of service, which applied to them immediately before the date of commencement of this Act.

(4) A person, who was no longer an employee of the Agribank immediately before the date of commencement of this Act, but was entitled to receive a payment in respect of a medical aid contribution, pension or any other subsidy or allowance from the Agribank on that date, continues to be so entitled.

**Repeal, or amendment, of laws and savings**

30. (1) The laws set out in the Schedule are repealed, or amended, to the extent set out in the third column of that Schedule.

- (2) Notwithstanding subsection (1) -
- (a) the Agribank continues to be party to -
    - (i) any contract, deed, bond, or other instrument, to which it was party immediately before the date of commencement of this Act by virtue of a law repealed by subsection (1); and
    - (ii) any proceedings pending immediately before the date of commencement of this Act and arising from anything done under a law repealed by subsection (1);
  - (b) any conditions relating to the borrowing of money, which is owed to Agribank before the date of commencement of this Act, whether imposed by contract or by the provisions of an Act repealed by subsection (1) or repealed by any other law, continue to apply to such money;
  - (c) interest rates determined in terms of section 51 of the Agricultural Bank Act, 1944 (Act No. 13 of 1944), continue to apply to contracts concluded between the Agribank and borrowers before the commencement of this Act

and are for all purposes deemed to be interest rates agreed between the parties, provided that the Agribank retains the right to determine interest rates as if the said section 51 had not been repealed; and

- (d) any other rights and obligations, which have vested in the Agricultural Bank of Namibia referred to in section 3, continue to vest in the Agribank.

(3) Notwithstanding the provisions of subsection (2)(b), the Agribank may novate a contract between the Agribank and a borrower, if the borrower agrees to that novation.

(4) Any notice made under a provision of a law repealed by this Act is deemed to have been made under a corresponding provision of this Act.

### Short title and commencement

31. (1) This Act is called the Agricultural Bank of Namibia Act, 2003, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) The Minister may determine different dates under subsection (1) in respect of different sections of this Act.

## SCHEDULE

### LAWS REPEALED OR AMENDED (Section 30(1))

No. and year of law	Short title	Extent of repeal or amendment
Act No. 13 of 1944	Agricultural Bank Act, 1944	The whole
Act No. 42 of 1951	Land Bank Amendment Act, 1951	The whole
Act No. 10 of 1952	Land Bank Amendment Act, 1952	The whole
Act No. 13 of 1953	Land Bank Amendment Act, 1953	The whole
Act No. 31 of 1954	Land Bank Amendment Act, 1954	The whole
Act No. 60 of 1957	Land Bank Amendment Act, 1957	The whole
Act No. 47 of 1959	Land Bank Amendment Act, 1959	The whole
Act No. 35 of 1961	Land Bank Amendment Act, 1961	The whole
Act No. 7 of 1962	Land Bank Amendment Act, 1962	The whole
Act No. 38 of 1963	Land Bank Amendment Act, 1963	The whole
Act No. 14 of 1964	Land Bank Amendment Act, 1964	The whole
Act No. 46 of 1965	Land Bank Amendment Act, 1965	The whole
Act No. 5 of 1968	Land Bank Amendment Act, 1968	The whole
Act No. 70 of 1968	General Law Amendment Act, 1968	The whole
Act No. 31 of 1969	Land Bank Amendment Act, 1969	The whole
Act No. 92 of 1970	General Law Further Amendment Act, 1970	The deletion of section 2.

No. and year of law	Short title	Extent of repeal or amendment
Act No. 57 of 1971	Suretyship Amendment Act, 1971	The whole
Act No. 41 of 1972	Land Bank Amendment Act, 1972	The whole
Act No. 52 of 1975	Land Bank Amendment Act, 1975	The whole
Act No. 109 of 1976	Land Bank Amendment Act, 1976	The whole
Proclamation No. R 147 of 1979	Land and Agricultural Bank of South West Africa Proclamation, 1979	The whole
Act No. 28 of 1980	Land Bank Amendment Act, 1980	The whole
Act No. 7 of 1985	Land Bank Amendment Act, 1985	The whole
Act No. 27 of 1991	Agricultural Bank Amendment Act, 1991	The whole
Act No. 15 of 1992	Agricultural Bank Matters Amendment Act, 1992	The whole
Act No. 15 of 1996	Rehoboth Investment and Development Corporation Repeal Act, 1996	The whole