

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**LOCAL AUTHORITIES  
AMENDMENT BILL**

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*(As read a First Time)*

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*(Introduced by the Minister of Urban and Rural Development)*

**[B. 12 - 2015]**

**EXPLANATORY NOTE:**

- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.
- [            ] Words in bold type in square brackets indicate omissions from existing provisions.

**BILL**

To amend the Local Authorities Act, 1992, so as to substitute and insert certain definitions; to provide further requirements for election as members of local authority councils; to make the period of office of members of local authority councils more clear; to provide for additional sanctions in the case of members of local authority councils who contravenes or fails to comply with any provisions of a code of conduct; to extend the circumstances under which a member of a local authority council shall vacate office; to subject payment of remuneration, allowances and other benefits of members of local authority councils to the maximum determined by the Minister; to subject the appointment and discharge of town clerks to the approval of the Minister; to further improve the delegation of powers of local authority councils; to improve on the procedure and conduct of disciplinary inquiry; to provide for requirements for a person to qualify as vulnerable person; to provide exemption of vulnerable persons from payment of certain local authority council charges or reduction of those charges; to provide for restrictive conditions in respect of the sale of immovable properties to Namibian citizens and foreign nationals; to provide for the designation of zones in local authority areas for purposes of reservation for acquiring immovable properties; to empower the Minister to prescribe categories and levels of income for the purposes acquiring immovable properties in designated zones and to prescribe certain levies in respect of immovable properties owned by foreign nationals; to add certain functions to local authority councils relating to water works; to increase certain penalties; to improve the provision relating to an interim valuation of rateable properties; to extend the powers of a valuation court with regard to a valuation roll; to provide for the submission of statements of estimated income and expenditure and supplementary statements for adoption by local authority councils and approval by the Minister; to improve the procedure relating to the convening of public meetings; to provide for steps the Minister may take relating to the failure by a local authority council to exercise or perform its powers, functions and duties; to extend the powers of the Minister to make regulations; and to provide for incidental matters

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

**Amendment of section 1 of Act No. 23 of 1992, as amended by section 1 of Act No. 24 of 2000, section 1 of Act No. 17 of 2002, section 1 of Act No. 14 of 2004, section 3 of Act No. 4 of 2006 and section 39 of Act No. 7 of 2003**

1. Section 1 of the Local Authorities Act, 1992 (*in this Act referred to as the "principal Act"*) is amended -

- (a) by the insertion before the definition of “approved township” of the following definitions:

“alienate”, in relation to immovable property situated within local authority area, means to enter into an agreement to sell, exchange, donate or otherwise dispose of, whether for any valuable consideration or otherwise, immovable property, and includes, in the case where such immovable property is registered in the name of -

- (a) a company, the alienation of shares of the company to another person;
- (b) a close corporation, the alienation of any member’s interest in the close corporation or any portion of such interest to another person; or
- (c) a body corporate, trust, association or any other legal entity, the alienation of controlling interest of its members or beneficiaries to another person or any interest,

that results in the controlling interest being held by a foreign national;”;  
and

“body corporate” means a body corporate established or recognised by law, but does not include a company or close corporation;”;

- (b) by the insertion after the definition of “chief executive officer” of the following definition:

“close corporation” means a close corporation registered under the Close Corporations Act, 1988 (Act No. 26 of 1988);”;

- (c) by the insertion after the definition of “combined private sewer” of the following definitions:

“company” means a company registered in terms of the Companies Act, 2004 (Act No 28 of 2004);

“controlling interest”, in relation to -

- (a) a company, means -
- (i) 51 per cent or more of the issued share capital of the company;
- (ii) 51 per cent or more of the voting rights in respect of the issued shares of the company; or
- (iii) the power, either directly or indirectly, to appoint or remove the majority of the directors of the company without the concurrence of any other person;
- (b) a close corporation, means 51 per cent or more of the interest in the close corporation; or

(c) a body corporate, trust, association or any other legal entity, means 51 per cent or more of the interest vesting in its members or beneficiaries”;

(d) by the insertion after the definition of “deputy mayor” of the following definitions:

“diplomatic mission” means any building or premises owned by a diplomatic agent for the purpose of a chancery or an official residence as an embassy or legation or the office or residence of a high commissioner or other diplomatic agent of a state duly accredited to the Republic of Namibia”;

(e) by the insertion after the definition of “financial year” of the following definition:

“foreign national” means -

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| <p>(a) a person who is not a Namibian citizen;</p> <p>(b) a company incorporated under the laws of any country other than Namibia, or under the laws of Namibia, in which the controlling interest is held by foreign nationals;</p> <p>(c) a close corporation incorporated under the laws of any country other than Namibia, or under the laws of Namibia, in which the controlling interest is held by foreign nationals; or</p> <p>(d) a body corporate, trust, association or any other legal entity in which the controlling interest or benefit is not held by Namibian <u>citizens</u>”;</p> |
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(f) by the substitution for the definition of “immovable property” of the following definition:

“immovable property” means any land or any **[building]** improvement on such land, and includes land and a unit as defined in sections 1, 5 and 54 of the Sectional Title Act, 2009 (Act No. 2 of 2009)”;

(g) by the substitution for the definition of “improvement” of the following definition:

“improvement”, in relation to immovable property, shall, for purposes of Parts XIV and XV, include storage tanks, but exclude any machinery or equipment, whether or not permanently fixed or attached to such immovable property”;

(h) by the substitution for the definition of “Minister” of the following definition:

“Minister” means the Minister responsible for **[Regional and Local Government and Housing]** local government affairs”;

(i) by the insertion after the definition of “municipal police service” of the following definitions:

“Namibian citizen” means a Namibian citizen as set out in Article 4 of the Namibian Constitution, and includes a Namibian legal entity and a person who is domiciled in Namibia or a permanent resident of Namibia as contemplated in section 22 and 26 of the Immigration Control Act, 1993 (Act No. of 1993);

“Namibian legal entity” means -

- (a) a company whose controlling interest is held by Namibian citizens;
  - (b) a close corporation whose controlling interest is held by Namibian citizens; or
  - (c) a body corporate, trust, association or any other legal entity whose controlling interest or benefit is held by Namibian citizens;”;
- (j) by the substitution for the definition of “rateable property” of the following definition:

“rateable property” means any immovable property situated within a local authority area, except any -

- (a) land of which the ownership and control vests in the Government of Namibia or a regional council and on which no buildings have been constructed or other improvements have been effected;
- (b) **[building]** fixed improvement, other than a dwelling, of which the ownership vests in the Government of Namibia or a regional council and which is **[not]** used or occupied for public purposes, including the land on which any such **[building]** fixed improvement is actually constructed and any other land actually occupied for purposes of such **[building]** fixed improvement;
- (c) immovable property used exclusively as -
  - (i) a place of worship registered with a local authority on conditions prescribed by the Minister;
  - (ii) a school or hostel other than a school or hostel which has been established and is maintained and managed by any person for profit or gain whether directly or indirectly;
  - (iii) a library or museum which has been established and is maintained and managed by the State;
  - (iv) a hospital, an institution as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), an institution for the care of juveniles or similar institution aided by the State or any charitable institution;

- (d) any immovable property of which the ownership vests in a local authority council;
- (e) any immovable property which has been, exempted from the payment of rates in terms of section 75 or any other law;”; and
- (k) by the insertion after the definition of “village secretary” of the following definition:

“vulnerable person” means a person who -

- (a) has an income that is below the average household income as determined under section 75(4); and
- (b) is registered by the local authority council concerned as vulnerable person, and who, either -
  - (i) has been declared as vulnerable under section 75(4);
  - (ii) is an orphan who lost one or both parents;
  - (iii) is medically diagnosed and certified as having a terminal illness;
  - (iv) is above 60 years of age; or
  - (v) is living with disability.”.

#### **Amendment of section 7 of Act No. 23 of 1992**

2. Section 7 of the principal Act is amended by the addition after paragraph (b) of subsection (1) of the following paragraph:

“(c) if he or she is not able to communicate, read and write in the official language of Namibia.”.

#### **Substitution of section 9 of Act No. 23 of 1992**

3. The principal Act is amended by the substitution for section 9 of the following section:

##### **“Periods of office of members of local authority councils**

9. A member of a local authority council shall, subject to the provisions of section 13(1), hold office as such a member -

- (a) from the date on which he or she is elected as such a member;
- (b) until the date immediately before the date on which the next election under section 8 is held in respect of that local authority council [**subsequent to his or her election as a member of the local authority council**],

but shall remain in office until the date preceding the date on which the new members are due to make and subscribe to the oath of office and assume duties.”.

**Amendment of section 10 of Act No. 23 of 1992, as amended by section 7 of Act 24 of 2000**

4. Section 10 of the principal Act is amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

- “(a) the application of a sanction, by way of -
- (i) a suspension of the right to attend meetings of a local authority council or a management committee for a period not exceeding **[one month]** 30 days;
  - (ii) the forfeiture of any allowance or other benefit or any allowance and any other benefit contemplated in section 18(1) for a period not exceeding 30 days against a member of a local authority council who contravenes or fails to comply with any provision of such code of conduct; or
  - (iii) the forfeiture or pro rata forfeiture of any allowance or other benefit or any allowance and any other benefit contemplated in section 18(1) for a failure to attend scheduled council or management committee meetings without notice to the chairperson of council of the intended absence or without approval or condonation of such absence by the council or management committee; and”.

**Amendment of section 13 of Act No. 23 of 1992, as amended by section 10 of Act No. 24 of 2000 and section 6 of Act No. 17 of 2002**

5. Section 13 of the principal Act is amended -

(a) by the substitution for paragraphs (f) and (g) of subsection (1) of the following paragraphs:

- “(f) by notice in writing addressed **[and delivered]** to the chief executive officer, resigns as member of the local authority council; **[and]**
- (g) is withdrawn by the political party, association or organization which nominated him or her for election[.]; and;
- (h) refuses to serve, without a valid reason, when elected -
- (i) as mayor or deputy mayor of a municipal council or a town council;
  - (ii) as chairperson or vice-chairperson of a village council; or
  - (iii) as member of a management committee; or
- (i) ceases to reside or only temporarily resides within the municipal, town or village area after having been elected as member of such municipal, town or village council.”.

- (b) by the insertion of the following section after subsection (1):

“(1A) The Minister may suspend, by notice in writing, any member of a local authority council from office if, on the recommendation of the local authority council concerned and after having given such member an opportunity to be heard, the Minister is satisfied that -

- (a) an offence is being investigated against such member;
- (b) a contravention of any provision of a code of conduct prescribed under section 10(3) is being investigated against such member, and a member may be so suspended from office notwithstanding -
  - (i) any sanction prescribed by the code of conduct under section 10(4); or
  - (ii) the fact that such a sanction may in the particular case have been applied by the local authority council against the member for such contravention.”; and

- (c) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) The Minister may remove by notice in writing any member of a local authority council from office, if, on recommendation of the local authority council concerned [**and after having given such member an opportunity to be heard,**] the Minister is satisfied that such member is found guilty of an offence or a contravention of any provision of a code of conduct prescribed under section 10(3), and a member may be so removed from office notwithstanding -

- (i) any sanction prescribed by the code of conduct under section 10(4); or
- (ii) the fact that such a sanction may in the particular case have been applied by the local authority council against the member for such contravention.”.

#### **Amendment of section 18 of Act No. 23 of 1992**

6. Section 18 of the principal Act is amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) Subject to subsection (2) and to such conditions as the Minister may impose, a municipal council, a town council or a village council may pay or provide to its members such remuneration, allowances and other benefits as the council may determine.

(2) Any remuneration, allowances or other benefits paid or provided by a municipal council, a town council or a village council in terms of



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subsection (1) may not exceed such remuneration, allowances or other benefits as the Minister may from time to time determine in respect of such council.”.

**Amendment of section 27 of Act No. 23 of 1992, as amended by section 18 of Act No. 24 of 2000 and section 11 of Act No. 17 of 2002**

7. Section 27 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- “(a) a municipal council or a town council on the recommendation of its management committee, or a village council, with the approval of the Minister, shall appoint a person as the town clerk of such municipal council or town council, or the village secretary of such village council, who shall -
- (i) in each case, be the chief executive officer of the local authority council; and
  - (ii) subject to the control and directions of the local authority council, be responsible for the carrying out of the decisions of the local authority council and for the administration of the affairs of the local authority council;”.

**Amendment of section 29 of Act No. 23 of 1992, as amended by section 19 of Act No. 24 of 2000**

8. Section 29 of the principal Act is amended -

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- “(a) in the local authority council in the case of -
- (i) the chief executive officer, with the prior written approval of the Minister; or
  - (ii) a head of a department referred to in section 28;”;

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) A management committee or a village council may delegate the power conferred upon it by subsection (1)(b) or (c) or (5) (a) to the chief executive officer.”;

(c) by the substitution for paragraph (a) of subsection (5) of the following paragraph:

“(a) If a management committee or village council has reason to believe that any staff member in the service of the local authority council, other than the chief executive officer or a head of a department referred to in section 28, is unfit for his or her duties or incapable of carrying out such duties efficiently, that management committee or village council shall designate a staff member or staff

members in the service of the local authority council or a person or persons having knowledge and experience in labour law to inquire into such reasons.”;

- (d) by the substitution for paragraphs (c) and (d) of subsection (5) of the following paragraphs:

“(c) (i) If the staff member or staff members or person or persons conducting the inquiry has found that the staff member concerned is unfit for his or her duties or incapable of carrying out such duties efficiently and, after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken against him or her, the staff member or person may recommend to the management committee or village council that -

(aa) the staff member be exonerated from the blame and that no further action be taken in the matter based on the same facts and, where applicable, recommend that the staff member be given an opportunity for training and skill development to improve his or her capacity in carrying out such duties efficiently;

(bb) the staff member be transferred to any other post; or

(cc) the remuneration or grade or both remuneration and grade of the staff member be reduced to a lower remuneration or grade; or

(dd) the staff member be discharged from the service of the local authority.

(ii) At the conclusion of such inquiry, the staff member concerned shall be notified of the finding of the inquiry.

(d)(i) If it has been found that the staff member concerned is unfit for his or her duties or incapable of carrying out such duties efficiently, he or she shall have the right to appeal, within seven days as from the date on which he or she is notified, to the management committee or village council concerned against such finding or such action or both such finding and action.

(ii) A staff member of a local authority council in respect of whom the management committee or the village council has decided to take any action contemplated in subparagraph (c)(i)(bb), (cc) or (dd), shall have the right to appeal -

(aa) in the case of a staff member of a municipal council or town council, to the municipal council or town council concerned;

(bb) in the case of a staff member of a village council, to the Minister.

(iii) The right of appeal referred to in subparagraph (ii) shall be against the finding or the action or both the finding and the action.

(iv) At any appeal in terms of this subsection the appellant shall have the rights provided for in paragraph (b) with the exception of items (bb) and (cc) thereof.”;

(f) by the substitution for subsections (6) and (7) of the following subsections:

“(6) (a) When a [**an officer or employee**] staff member in the service of a local authority council is accused of misconduct, the chief executive officer or, if such [**officer**] staff member is employed in a department established under section 28, the head of the department or other [**officer in that department**] staff member designated for that purpose by the Chief Executive Officer or such head may charge such [**officer or employee**] staff member in writing with such misconduct, and the charge shall contain or shall be accompanied by a direction calling upon the [**officer or employee**] staff member charged to deliver within a time period specified in the direction to a person so specified a written admission or denial of the charge and, if he or she so desires, a written explanation regarding the misconduct with which he or she is charged.

(b) A staff member may at any time before or after he or she has been charged under this subsection be suspended from duty on such conditions as may be prescribed in the rules referred to in section 27(1)(c), but a prior written approval of the Minister is required in the case of the chief executive officer.

(c) If the [**officer or employee**] staff member charged admits that he or she is guilty of the charge, he or she shall be deemed to be guilty of misconduct as charged and he or she must be referred to the inquiry committee established under paragraph (d) to consider a recommendation as similarly set out in paragraph (f).

(d) If he or she denies the charge or fails to comply with the direction contemplated in paragraph (a) or admitted the charge under paragraph (c), the management committee or the village council concerned, as the case may be, shall appoint a staff member in the service of the local authority council or a person or persons having knowledge and experience in labour law to inquire into the charge.

(e) At an inquiry in terms of paragraph (d) the [**officer or employee**] staff member charged shall have the right -

(i) if the misconduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law, to show cause why, in his or her opinion, he or she was wrongly convicted;

(ii) to be present at the inquiry, to be assisted or represented by any other person, to give evidence and, either personally or through a representative -

(aa) to be heard;

- (bb) to call witnesses;
- (cc) to cross-examine any person called as a witness in support of the charge;
- (dd) to have access to documents produced in evidence.

(f) (i) If the staff member charged is found guilty of the charge by the staff member or staff members or person or persons conducting the inquiry, or if he or she admits that he or she is guilty of the charge, the staff member or staff members or person or persons conducting the enquiry shall, after affording the staff member concerned an opportunity to make representations in relation to any intended action to be taken against him or her, recommend to the management committee or village council concerned, as the case may be -

- (aa) that no further action be taken in the matter;
- (bb) that he or she be cautioned or reprimanded;
- (cc) that he or she be transferred to any other post;
- (dd) that his or her remuneration or grade or both his or her remuneration and grade be reduced to an extent recommended;
- (ee) that any loss or damage occasioned by the misconduct be deducted, either as a single amount or in installments, from his or her salary, which recommendation, if accepted, either as recommended or as may have been amended by the management committee or village council, shall be deemed to be an order of court; or
- (ff) that he or she be discharged or called upon to resign from the service of the local authority council from a date to be fixed by the local authority council.

(ii) At the conclusion of the inquiry the staff member charged shall be notified of the finding and the action of the staff member or staff members or person or persons conducting the inquiry.

(g) (i) If the staff member charged has been found guilty he or she shall have the right to appeal, within seven days as from the date on which he or she is notified of the finding and the action, to the management committee or, in the case of a staff member of a village council, to the village council concerned, as the case may be, against such finding or action or against both such finding and action.

(ii) The management committee or village council concerned, as the case may be, having regard to the documents relating to the finding, take such action as it may, with due regard to such recommendations, deems to be fair and equitable.

(gA) (i) The staff member concerned shall have the right to appeal, within seven days from the date on which he or she is notified of the finding and the action contemplated in paragraph (g)(ii) against such finding or action or against both such finding and action.

(ii) The right of appeal referred to in subparagraph (i) shall

(aa) in the case of a staff member of a municipal council or town council, be to the municipal council or town council concerned;

(bb) in the case of a staff member of a village council, be to the Minister.

(gB) At any appeal in terms of this subsection the appellant shall have the rights provided for in paragraph (b), with the exceptions of items (aa), (bb) and (cc) thereof.

(7) For purposes of this section any reference to the designation of any staff member in the service of the local authority council or a person to hold an inquiry in terms of subsection (5)(a) or subsection (6)(d), and any reference to the Chief Executive Officer, a head of a department or other staff member designated to charge another staff member with misconduct in terms of subsection (6)(a), [shall] may include a legal practitioner enrolled under the Legal Practitioners Act, 1995 (Act No 15 of 1995), appointed by the local authority council for such purpose but a person who is a legal practitioner or any other individual not in the employ of the local authority may not appear on behalf of a party, except if -

(a) the parties to the inquiry agree; or

(b) at the request of a party to an inquiry, the staff member or the person or persons appointed to hold the inquiry are satisfied that -

(i) the inquiry is of such complexity that it is appropriate for a party to be represented by a legal practitioner or any other individual not in the employ of the local authority; and

(ii) the other party to the inquiry will not be prejudiced; or

(iii) representation by that individual will facilitate the effective resolution of the inquiry or the attainment of the objectives of this section;

(iv) the individual meets the prescribed requirements.

(8) In determining whether to permit representation of a party in terms of subsection (7) the staff member or the person or

persons appointed to hold the inquiry in terms of subsection (5) or (6), shall take into account applicable guidelines issued under the Labour Act, 2007 (Act 11 of 2007) to determine if legal representation is to be permitted.”.

**Amendment of section 30, as amended by section 21 of Act No. 24 of 2000, Act No. 17 of 2002 and Act No. 14 of 2004**

9. Section 30 of the principal Act is amended -
- (a) by the substitution for paragraph (t) of subsection (1) of the following paragraph:
- “(t) subject to the provisions of part XIII, to -
- (i) hire or otherwise acquire, with the prior written approval of the Minister and subject to such conditions, if any, as may be determined by him or her, any immovable property or right therein;
  - (ii) buy or acquire, with the prior written approval of the Minister and subject to such conditions, if any, as may be determined by him or her, immovable property or any right in respect of immovable property for any purpose connected with the powers, duties or functions of such local authority council; or
  - (iii) sell, let, hypothecate or otherwise dispose of or encumber any such immovable property, with the prior written approval of the Minister and subject to such conditions if any, as may be determined by him or her, any immovable property and subject thereto that the Minister may determine the method of sale, (excluding a sale by auction), letting or hypothecation to be applied by a local authority council in respect of the immovable property.”; and
- (b) by the insertion after paragraph (ae) of subsection (1) of the following paragraph:
- “(af) to exempt a vulnerable person from the payment of any of the charges, fees, deposit and other moneys levied under paragraph (u) or to reduce such payment in respect of such vulnerable person, either generally or in a specific case, by notice in the *Gazette*,”.

**Amendment of section 31 of Act No. 23 of 1992, as amended by section 21 of Act No. 24 of 2000**

10. Section 31 of the principal Act is amended by the insertion after paragraph (d) of subsection (1) of the following paragraph:

- “(dA) to appoint, suspend or discharge a chief executive officer or a head of a department referred to in section 28; or”.

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**Insertion of Part VA in Act No. 23 of 1992**

**11.** The Principal Act is amended by the insertion after Part V of the following Part:

“PART VA

RESTRICTION ON SALE OF IMMOVABLE PROPERTIES WITHIN  
LOCAL AUTHORITY AREAS

**Restriction of acquiring immovable properties within certain reserved areas in local authority areas, and designation of zones in local authority areas for purposes of reservation for acquiring immovable properties**

**33A.** (1) A local authority, by notice in the *Gazette*, must, within the local authority area, designate -

- (a) certain areas as zones reserved for Namibian citizens for the purposes of acquiring immovable properties in accordance with the categories or levels of income contemplated in subsection (2), and subject to subsection (3);
- (b) certain areas as open zones in which any person, Namibian citizen or foreign national, may acquire immovable property subject to subsections (2)(b) and (c) and (4).

(2) For the purposes of subsection (1), the Minister, in respect of local authority areas, must prescribe -

- (a) the categories and levels of income in respect of Namibian citizens who may acquire immovable properties in designated zones reserved for Namibian citizens in terms of that subsection;
- (b) the maximum size or number of immovable property a Namibian citizen may acquire in certain designated zones reserved for Namibian citizens
- (b) the maximum size of immovable property a foreign national may acquire in any open zone reserved for any person in terms of that subsection; and
- (c) the foreign levies in respect of immovable property owned by foreign nationals in any local authority area that may differ from one area to the other.

(3) A Namibian citizen of a higher level of income may not acquire immovable property in a zone reserved for Namibian citizens with lower level of income than such Namibian citizen, except -

- (a) with the approval of the Minister given after the Minister having satisfied himself or herself with the terms and conditions prescribed by the Minister; or
- (b) if the immovable property is a business or land reserved for business purposes.

- (4) A foreign national -
- (a) may not acquire immovable property in a local authority area in a zone reserved for Namibian citizens;
  - (b) may acquire immovable property in a local authority area in open zones reserved for any person, but only if such property is -
    - (i) a dwelling; or
    - (ii) a land that is reserved for dwelling purposes.

(5) Despite subsection (4), whenever immovable property is offered for sale in any open zone in a local authority area preferent right is given to Namibian citizens.

### **Alienation of immovable property in local authority areas**

- 33B.** (1) Subject to subsections (2) and (8) and section 33C -
- (a) an owner of immovable property situated in a zone reserved for Namibian citizens who intends to alienate the property; or
  - (b) a foreign national who owns immovable property in a local authority area, which is not a dwelling or land that is reserved for dwelling purposes, and intends to alienate the property,

may only alienate the property to a Namibian citizen.

- (2) The Minister may in writing approve -
- (a) the alienation and transfer of immovable property referred to in subsection (1) to an accredited diplomatic mission of a State that allows for the reciprocal diplomatic privilege of land ownership in their country in favour of the Republic of Namibia; or
  - (b) the letting of immovable property owned by a foreign national within a zone reserved for Namibian citizens in a local authority area to a foreign national for a period not exceeding 30 years if such property is a business, but not for a period of 12 months or less.

(3) Despite anything to the contrary in any law, but subject to subsections (2) and (8) and section 33C, no agreement of alienation of immovable property situated in a local authority area entered into by the owner of such immovable property under subsection (1) to a foreign national is of any force and effect if such immovable property is alienated contrary to sections 33A, 33C and this section.

(4) Whenever one or more members of a legal entity which is the owner of immovable property situated within a local authority area in a zone reserved for Namibian citizens intends to alienate or transfer -



- (a) in the case of a company, any shares of the company to another person;
- (b) in the case of a close corporation, any interest in the close corporation, or any portion of such interest, to another person, or
- (c) in the case of a body corporate, trust, association or any other legal entity any interest in such body corporate, trust, association or legal entity, or any portion of such interest, to another person,

that results in the controlling interest being owned by a foreign national, it shall, for the purposes of subsections (1) or (2) and section 33A(1), (2) or (3), be construed that the legal entity in its capacity as owner of the immovable property intends to alienate such immovable property.

(6) An owner of immovable property situated in a local authority area who intends to have a usufruct registered over the whole or part of that immovable property in favour of a person, other than a relative of the owner, it is, for the purposes of subsection (1) and (2) and section 33C, deemed that the owner intends to alienate the immovable property, and for the purpose of this subsection "relative" means spouse, child, parent or sibling of the owner or any dependant of the owner.

(7) The registrar of deeds may not register a notarial lease, usufruct or the transfer of immovable property situated in a local authority area in a zone reserved for Namibian citizens in the name of a foreign national or a diplomatic mission unless -

- (a) the written approval of the Minister;
- (b) a waiver under section 33C; or
- (c) the required proof of circumstances referred to in subsection (8),

is submitted to the Registrar.

(8) Subsection (1) does not apply where immovable property is alienated -

- (a) in the administration of a deceased estate or in accordance with a redistribution of assets in a deceased estate between heirs, legatees and beneficiaries of a will;
- (b) by a co-owner of such immovable property to another co-owner thereof, except where -
  - (i) the other co-owner is a foreign national; or
  - (ii) such immovable property is owned by a company or close corporation;

- (c) by providing the immovable property as security to -
- (i) a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);
  - (ii) a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 2 of 1986);
  - (iii) the Savings Bank as defined in section 1 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992);
  - (iv) the Agricultural Bank of Namibia Act, 2003 (Act No.5 of 2003); or
  - (v) such other financial institution as may be approved by the Minister; or
- (d) in such other circumstances as the Minister may prescribe.

**Vesting in State of preferent right to purchase immovable properties of diplomatic mission in local authority areas**

**33C.** The State has a preferent right to purchase immovable property that is owned by a diplomatic mission situated in a local authority area whenever the diplomatic mission intends to alienate such immovable property, unless the State has given a waiver in writing.”

**Amendment of section 34 of Act No. 23 of 1992, as amended by section 23 of Act No. 24 of 2000**

**12.** Section 34 of the principal Act is amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) generally perform or carry out any other function, including the prohibition, restriction, regulation and control of the sinking, maintenance or use of boreholes or wells, which is necessary for, or conducive to, the power of supplying water to the residents in its area.”

**Amendment of section 37 of Act No. 23 of 1992, as amended by section 25 of Act No. 24 of 2000**

**13.** Section 37 of the principal Act is amended by the substitution for the closing sentence after paragraph (d) of subsection (1) of the following closing sentence:

“shall be guilty of an offence and on conviction liable to a fine not exceeding [N\$2 000] N\$10 000 or to imprisonment for a period not exceeding [six months] two years or to both such fine and such imprisonment provided that in the case of a continuing offence an additional fine not exceeding N\$500 for every day upon which the contravention continued to be imposed.”

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**Amendment of section 44 of Act No. 23 of 1992**

14. Section 44 of the principal Act is amended by the substitution for the closing sentence after paragraph (g) of subsection (1) of the following closing sentence:

“shall be guilty of an offence and on conviction liable to a fine not exceeding [N\$2 000] N\$5 000 or to imprisonment for a period not exceeding [six] 12 months or to both such fine and such imprisonment, but in the case of a continuing offence an additional fine not exceeding N\$500 for every day upon which the contravention continues.”.

**Amendment of section 47 of Act No. 23 of 1992**

15. Section 47 of the principal Act is amended by the substitution for the closing sentence after paragraph (b) of the following closing sentence:

“shall be guilty of an offence and on conviction liable to a fine not exceeding [N\$2 000] N\$5 000 or to imprisonment for a period not exceeding [six] 12 months or to both such fine and such imprisonment, but in the case of a continuing offence an additional fine not exceeding N\$500 for every day upon which the contravention continues.”.

**Amendment of section 50 of Act No. 23 of 1992, as amended by section 27 of Act No. 24 of 2000**

16. Section 50 of the principal Act is amended by the substitution for subsection (6) of the following subsection:

“(6) Any person who uses a public place or street or any portion thereof that has been temporarily or permanently closed or diverted in terms of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding [N\$2 000] N\$5 000 or to imprisonment for a period not exceeding [six] 12 months or to both such fine and such imprisonment, but in the case of a continuing offence an additional fine not exceeding N\$500 for every day upon which the contravention continues.”.

**Amendment of section 51 of Act No. 23 of 1992**

17. Section 51 of the principal Act is amended by the substitution for the words following paragraph (c) of subsection (1) of the following words:

“shall be guilty of an offence and on conviction liable to a fine not exceeding [N\$2 000] N\$5 000 or to imprisonment for a period not exceeding [six] 12 months or to both such fine and such imprisonment, but in the case of a continuing offence an additional fine not exceeding N\$500 for every day upon which the contravention continues.”.

**Amendment of section 55 of Act No. 23 of 1992**

18. Section 55 of the principal Act is amended by the substitution for the closing sentence after paragraph (c) of subsection (1) of the following closing sentence:

“shall be guilty of an offence and on conviction liable to a fine not exceeding [N\$2 000] N\$5 000 or to imprisonment for a period not exceeding [six]

12 months or to both such fine and such imprisonment, but in the case of a continuing offence an additional fine not exceeding N\$500 for every day upon which the contravention continues.”.

**Amendment of section 63 of Act 23 of 1992, as amended by section 29 of Act No. 24 of 2000**

**19.** Section 63 of the principal Act is amended:

(a) by the substitution for the introductory sentence and paragraph (a) of subsection (1) of the following sentence and paragraph:

“(1) **[Notwithstanding the provisions of section 30(1)(t), but]** Subject to subsections (2) and (3) and section 30(1)(t)(iii) and (3) (c), the approval of the Minister is not required in relation to -”

(a) the letting of immovable property other than townlands or any portion of such townlands to a Namibian citizen by any local authority council for a period not exceeding **[one year] 12 months;**”;

(b) by the deletion of paragraph (b) of subsection (1);

(c) by the substitution for the introductory sentence of subsection (2) of the following introductory sentence:

“**[A local authority council referred to in paragraph (b) of subsection (1)]** A local authority shall, before any immovable property [so referred to] is sold, disposed of, or let, hypothecated or otherwise encumbered, whether by way of [public auction or] tender or private transaction, first consult the Minister on its intention to so sell, dispose of or let, hypothecate or otherwise encumber such property, and after having consulted with the Minister, on such conditions as approved by the Minister, 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 -

(d) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) The Minister may grant or refuse to grant his or her approval contemplated in paragraph (b)(ii) or may direct the immovable property in question to be sold, disposed of, let, hypothecated or otherwise encumbered by way of **[public auction or]** tender.”.

**Amendment of section 64 of Act 23 of 1992**

**20.** Section 64 of the principal Act is amended by the substitution for the introductory sentence of the following introductory sentence:

“The Minister may, before considering his or her approval contemplated in section 30(1)(t)(i) or (ii) for the buying, hiring or acquisition of immovable property by a local authority council, direct the local authority council in question to publish a notice in at least two newspapers circulating in its area -”.

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**Substitution of section 65 of Act No. 23 of 1992**

**21.** The principal Act is amended by the substitution for section 65 of the following section:

**“Prescription**

**65.** (1) Notwithstanding the provisions of the Prescription Act, 1969 (Act 68 of 1969), or any other law, no person shall by prescription become the owner of any immovable property of a local authority council or of any right in such property.

(2) Notwithstanding the provisions of subparagraphs (b) and (d) of section 11 of the Prescription Act, 1969 (Act 68 of 1969), or any other law, the periods of prescription of debts in respect of -

- (a) charges, fees, deposits, levies, availability charges and other moneys payable in respect of any service, amenity or facility established and provided by a local authority council under this Act or any other law; and
- (b) any matter regulated and controlled by a local authority council under this Act or any other law,

is 15 years.”.

**Substitution of section 66 of Act No. 23 of 1992, as amended by section 30 of Act No. 24 of 2000**

**22.** The principal Act is amended by the substitution for section 66 of the following section:

**“Valuation of rateable properties within local authority areas**

**66.** (1) With the approval of the Minister, a local authority council may, by notice in the *Gazette*, declare that a general valuation of all rateable property situated within its area be held with effect from a date determined and made known by the local authority council in the notice.

(2) Notwithstanding subsection (1), but subject to subsection (4), the Minister, by notice in the *Gazette*, may declare that a general valuation of rateable properties shall be held -

- (a) in all local authority areas as soon as possible after the date specified in the notice; and
- (b) thereafter, at intervals of not more than five years of the date so specified under paragraph (a),

with effect from a date determined and made known by a local authority council by notice in the *Gazette*.

(3) There shall be an interim valuation of any rateable property in any local authority area to be held on a date during any period of five years

referred to in subsection (2) as may be determined by the local authority council at its own motion or when directed by the Minister by notice in writing to a local authority council.

(4) Notwithstanding subsection (2), the Minister may exclude any local authority council from holding, in terms of that subsection, a general valuation of rateable properties within its area, subject to such local authority council causing a general valuation to be held -

- (a) at intervals of not more than five years as from the date determined by the Minister in terms of that subsection; and
- (b) with effect from a date to be determined and made known by the local authority council by notice in the *Gazette*.

(5) The provisions of this Act relating to a general valuation shall apply with the necessary changes to an interim valuation of any rateable property.

(6) An interim valuation shall be done in respect of the following rateable properties -

- (a) whenever new improvements have been erected to a property contained in the main valuation roll;
- (b) whenever additions or alterations have been effected to improvements contained in the main valuation roll;
- (c) whenever improvements contained in the main valuation roll, or a portion thereof, have been demolished;
- (d) whenever a property or part thereof is not contained in the main valuation roll;
- (e) whenever a property has been subdivided or consolidated after being included in the main valuation roll;
- (f) whenever a property included on the main valuation roll was rezoned or granted a consent use in terms of a town planning scheme promulgated in terms of the Town Planning Ordinance, 1954 (Ordinance No 18 of 1954);
- (g) whenever a property was substantially incorrectly valued as it is contained in the main valuation roll; or
- (h) whenever there is good cause to revalue a property contained in the main valuation roll.

(7) The valuation date of an interim valuation shall be the same as that of the immediately preceding general valuation.”.

**Amendment of section 67 of Act 23 of 1992 as amended by section 31 of Act 24 of 2000.**

23. Section 67 of the principal Act is amended by the insertion after subsection (1) of the following subsection:

“(1A) The appointment of a valuer for a general valuation may include his or her appointment for any interim valuation done between that general valuation and the next general valuation.”.

**Amendment of section 70 of Act No. 23 of 1992, as amended by section 33 of Act No. 24 of 2000**

24. Section 70 of the principal Act is amended by the substitution for the introductory sentence of paragraph (b) of subsection (6) of the following introductory sentence:

“(b) may, after having considered all matters pertaining to any valuation contained in the provisional valuation roll or any property which were omitted from the previous main valuation roll or in respect of which an error had been made or which has become rateable in terms of section 73(1A) -”.

**Amendment of section 75 of Act No. 23 of 1992, as amended by sec 36 of Act No. 24 of 2000**

25. Section 75 of the principal Act is amended -

(a) by the addition after paragraph (c) of subsection (1) of the following paragraph:

“(d) any land or building owned or occupied by a vulnerable person.”; and

(b) by the addition after subsection (3) of the following subsection:

“(4) the Minister, by notice in the *Gazette*, may -

(a) determine an income that is below the average household income; or

(b) declare an individual or category of persons as vulnerable persons,

for the purposes of paragraph (d) of subsection (1).”.

**Substitution of section 78 of Act No. 23 of 1992, as amended by section 7 of Act No. 35 of 1994, section 39 of Act No. 24 of 2000 and section 14 of Act No. 17 of 2002**

26. The principal Act is amended by the substitution for section 78 of the following section:

**“Transfer of rateable properties**

78. Subject to the provisions of section 89(4) of the Insolvency Act, 1936 (Act No. 24 of 1936) the registrar of deeds shall not register a transfer of any immovable property situated within a local authority area, unless there is produced to him or her -

- (a) in the case of a registration of transfer in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or when a development scheme is to be registered or a registration of a transfer of a sectional title deed for a sectional title unit as defined in section 1 of the Sectional Title Act, 2009 (Act No. 2 of 2009), is to be effected, a conveyancer’s certificate; or
- (b) in the case of a registration of transfer in terms of the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976), the document referred to in section 48 of that Act,

certifying -

- (i) that -
  - (aa) all rates leviable in respect of such immovable property in terms of this Act, and all the fees, charges and other moneys due to the local authority council in respect of any service, amenity or facility supplied to such property in terms of this Act, inclusive of any availability charge and minimum charge provided for in section 30(1)(u) has been paid; and
  - (bb) a building compliance certificate by the relevant local authority has been issued, unless the immovable property is unimproved; or
- (ii) that such immovable property is not contained in the main valuation roll, a provisional valuation roll or any other register held by the local authority council.”.

**Amendment of section 83 of Act No. 23 of 1992, as amended by section 41 of Act No. 24 of 2000**

27. Section 83 of the principal Act is amended by the substitution for the closing sentence after paragraph (b) of subsection (1) of the following closing sentence:

“which statements shall be submitted by the chairperson of the local authority council concerned to the local authority council for its adoption and subsequent approval by the Minister.”.

**Substitution of section 88 of Act No. 23 of 1992**

28. The principal Act is amended by the substitution for section 88 of the following section:



**“Public meetings for purposes of discussion of matters of public interest**

**88.** (1) Subject to subsection (1A), the chairperson of a local authority council -

- (a) shall convene at least three public meetings annually; and
- (b) shall convene, a meeting to which the public is invited for purposes of discussion of any matter of public interest contemplated in subsection (1A).

(1A) A meeting referred to in subsection (1) shall be convened by way of -

- (a) a public notice in any newspaper circulating within the local authority area; and
- (b) such other manner calculated to reach as many members of the public as possible,

for purposes of discussion of any matter of public interest set out in the notice, and shall be held on such date and at such time and public place within the local authority area as may be determined by the chairperson and set out in the notice.

(1B) The chairperson -

- (a) may determine the agenda of the meeting;
- (b) shall state in the public notice that any person who intends to discuss any other issue at the meeting, shall notify the chairperson in writing thereof at least 7 days prior to the date of the meeting.

(2) For purposes of subsection (1) any matter relating to the promotion, opposition or discussion of the election of any person as a member of the local authority council shall be deemed not to be a matter of public interest.

(3) Any costs incurred by the chairperson of a local council in convening a meeting in terms of subsection (1) shall be paid out of the funds of the local authority council.”.

**Amendment of section 91 of Act No. 23 of 1992, as amended by section 50 of Act No. 24 of 2000**

**29.** Section 91 of the principal Act is amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) Any person who contravenes or fails to comply with the provisions of paragraph (a) [**shall be guilty of**] commits an offence and on conviction is liable to a fine not exceeding [**N\$2 000**] N\$5 000 or to imprisonment for a period not exceeding [**six**] 12 months, but in the case of a continuing offence is liable to an additional fine not exceeding N\$500 for every day upon which the contravention or failure continues.”.

**Amendment of section 92 of Act No. 23 of 1992, as substituted by section 45 of Act No. 24 of 2002 and amended by section 17 of Act No. 17 of 2002**

**30.** Section 92 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) If [, in the case of a local authority council other than the municipal council of a municipality referred to in Part I of schedule 1,] the Minister is satisfied -

- (a) that a local authority council is unable to exercise the powers and perform the duties and functions by law conferred and imposed on such council;
- (b) on account of a report by the Auditor-General after conducting an ordinary audit or conducting an audit at the request of the Minister -
  - (i) that [**the**] a local authority council is unable to meet its financial commitments; or
  - (ii) that no proper control is exercised over the assets and liabilities of [**the**] a local authority council; or
- (c) that [**the**] a local authority council does not comply with the requirements of section 14(1)(a) in relation to the holdings of meetings,

the Minister may by notice in writing, after having given such local authority council an opportunity to submit representations to him or her, instruct such local authority council to take such steps in order to rectify the issues concerned, within the period of time and in accordance with any details and directives, as specified in the notice.”.

**Amendment of section 94 of Act No. 23 of 1992, as amended by section 48 of Act No. 24 of 2002 and amended by section 18 of Act No. 17 of 2002**

**31.** Section 94 of the principal Act is amended -

- (a) by the deletion of paragraph (ar) of subsection (1).
- (b) by the addition of the following paragraph after paragraph (au) of subsection (1):

“(av) subject to the Water Act, 1956 (Act No. 54 of 1956), the prohibition, regulation, control and restriction of any act or omission that may result in any substance, material, gas or fluid reaching any groundwater;”; and
- (c) by the substitution for subsection (4) of the following subsection:

“(4) A regulation made under subsection (1) or (2) may in respect of any contravention thereof or a failure to comply therewith prescribe a penalty not exceeding a fine of [**N\$2 000**] N\$10 000 or

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imprisonment for a period not exceeding [**six months**] two years, but in the case of a continuing offence, an additional fine not exceeding N\$500 for every day upon which the contravention or failure continues.”.

**Amendment of section 94A of Act No. 23 of 1992, as inserted by section 49 of Act No. 24 of 2000**

- 32.** Section 94A of the principal Act is amended -
- (a) by the substitution for paragraphs (e) and (f) of subsection (1) of the following paragraphs:
- “(e) the delegation of powers and the assignment of duties or functions by any staff member of a local authority council, including the procedures relating thereto;
- (f) the suspension and discharge of staff members;” and
- (b) by the addition after paragraph (f) of the following paragraphs:
- “(g) the valuation of rateable property by valuers and valuation courts and the procedures to be followed at valuation courts;  
and
- (h) any other matter which the Minister may consider expedient to prescribe in order to attain the objects of this Act.”.

**Short title**

- 33.** This Act is called the Local Authorities Amendment Act, 2015.
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