

NAMIBIAN COLLEGE OF OPEN LEARNING ACT 1 OF 1997

[ASSENTED TO 20 MAY 1997]

[DATE OF COMMENCEMENT: 25 SEPTEMBER 1997]

(Signed by the President)

as amended by

State-owned Enterprises Governance Act 2 of 2006

ACT

To establish the Namibian College of Open Learning; to provide for its administration and control of affairs; to regulate its activities; and to provide for matters incidental thereto.

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1 Definitions

In this Act, unless the context otherwise indicates-

"Board" means the Board of Governors of NAMCOL referred to in section 7;

"Deputy Director" means any Deputy Director of NAMCOL referred to in section 14(1)(b);

"Director" means the Director of NAMCOL referred to in section 14(1)(a);

"learner" means any person enrolled for studies with NAMCOL;

"Management Committee" means the Management Committee referred to in section 15;

"Minister" means the Minister to whom the administration of this Act has been assigned in terms of section 27;

"NAMCOL" means the Namibian College of Open Learning established by section 2;

"open learning" means the flexible use of various modes and means of instruction, interaction, or communication for teaching and learning;

"Permanent Secretary" means the Permanent Secretary accountable for the management

and administration of the Ministry contemplated in section 27;

"rules" means the rules made under section 10;

"staff of NAMCOL" means the staff referred to in section 16.

2 Establishment of NAMCOL

(1) There is hereby established a college to be known as the Namibian College of Open Learning, the shortened form of which shall be "NAMCOL", and which may be used as an alternative to, and independent from, the name Namibian College of Open Learning.

(2) The head office of NAMCOL shall be at Windhoek.

3 Status and proprietary capacity of NAMCOL

NAMCOL shall be a juristic person capable in law of suing and being sued in its own name and shall have the power, subject to this Act, of purchasing or in any manner acquiring, holding, hiring, letting, selling, exchanging or otherwise alienating any movable or immovable property, of granting to any person a real right in, or servitude on, its property and of investing, lending, or borrowing money.

4 Objects of NAMCOL

The objects of NAMCOL shall be-

- (a) to contribute towards the social and economic development of Namibia by upgrading the educational level of adults and out-of-school youths-
 - (i) through programmes of open learning;
 - (ii) by designing, developing and offering programmes to address the diverse educational needs of such adults and out-of-school youths; and
 - (iii) by providing opportunities for adults and out-of-school youths to upgrade their professional and vocational skills, as well as their level of general education, to attain economics self-improvement and managerial skills for the sound management of, *inter alia*, rural societies and non governmental organizations;
- (b) to broaden access to education by establishing and maintaining tutorial centres in the various regions of Namibia for those Namibians who have been deprived of formal education or vocational training or who are too old or for other reasons are unable to engage in conventional school-based education;
- (c) to create opportunities for open learning through the use of modern instructional

and administration of the Ministry contemplated in section 27;

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- (c) to create opportunities for open learning through the use of modern instructional

techniques, including, but not limited to, the media, and utilisation of technological equipment;

- (d) to provide guidance or counselling services to those seeking admission into programmes of open learning, as well as to learners already involved in such programmes;
- (e) to provide an effective collegial governance structure that encourages active participation of all its constituents and reflects the collective input of such constituents;
- (f) to co-ordinate with other bodies, institutions, organizations and interest groups in order to facilitate co-operation and encouragement of an inter-disciplinary and multi-disciplinary approach to open learning; and
- (g) to seek and promote co-operation with regional and international institutions providing education.

5 Powers, duties and functions of NAMCOL

The functions of NAMCOL shall be to achieve its objects with the means at its disposal, and for the purposes of achieving those objects NAMCOL may-

- (a) establish, with the concurrence of the Minister, such centres, departments, divisions, sections or other components, and maintain such facilities, as it may deem necessary to provide open learning;
- (b) purchase, hire or otherwise acquire or sell, let or otherwise dispose of movable and, with the prior approval of the Minister, immovable property;
- (c) open banking accounts, including saving accounts;
- (d) take up, borrow or lend any money, with or without security;
- (e) establish reserve funds, or invest moneys not immediately required for its affairs, with any financial institution approved by the Minister;
- (f) determine programmes of open learning in accordance with such educational objectives and guidelines as it may determine, and compile, publish and distribute educational materials and assert copyright over such materials;
- (g) enter into agreements with any person, whether inside Namibia or not, upon such conditions as the Board and such person may agree,

and exercise and perform any other power or duty conferred or imposed upon NAMCOL or the Board under any other provision of this Act, and may, generally, do anything that is necessary for, or conducive to, the attainment of the objects of NAMCOL, whether or not it relates to any

matter expressly mentioned in this section.

6 Constitution of NAMCOL

NAMCOL shall consist of-

- (a) the Board of Governors of NAMCOL referred to in section 7;
- (b) the Director and Deputy Director or Deputy Directors;
- (c) the Management Committee;
- (d) the staff of NAMCOL; and
- (e) the learners of NAMCOL.

7 Board of Governors

(1) Subject to the provisions of this Act, the government and general control of NAMCOL shall be vested in a board to be known as the Board of Governors of NAMCOL, which shall be constituted, and its members, including the chairperson and the vice-chairperson of the Board, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Board shall include the following persons:

- (a) the Permanent Secretary;
- (b) one member of the staff referred to in section 6(d), appointed by a majority of the members of the staff referred to in that section; and
- (c) not less than five and not more than twenty-three other members appointed by the Minister-
 - (i) on account of their experience, knowledge, or interest in any matter relating to education or open learning; and
 - (ii) after consultation with such bodies, institutions, or organizations having an interest in education or open learning as the Minister may deem necessary.

[Subsec (1) amended by sec 49 of Act 2 of 2006.]

(2) Upon recognition of the Learners' Representative Council in accordance with the provisions of section 17(1), the Learners' Representative Council shall elect one of its members as a member of the Board, and whereupon the Board shall consist of the members referred to in subsection (1) and such member.

(3) The Permanent Secretary may designate any staff member in his or her office to act as an alternate member of the Board in his or her stead.

(4) The members of the Board shall at the first meeting of the Board elect from among their number a Chairperson and Vice-Chairperson of the Board.

8 Periods of office and conditions of service of members of Board

(1)

[Subsec (1) deleted by sec 49 of Act 2 of 2006.]

(2) A member of the Board shall vacate his or her office if-

- (a) his or her estate is sequestrated;
- (b) he or she is declared mentally ill by a competent court;
- (c) he or she is convicted of any offence and sentenced to imprisonment without the option of a fine;
- (d) he or she resigns as a member by giving not less than one month's notice in writing to the Minister;
- (e) he or she absents himself or herself from three consecutive meetings of the Board without its leave; or
- (f) he or she is removed from office in terms of subsection (3).

[Subsec (2) amended by sec 49 of Act 2 of 2006.]

(3) The Minister may, after consultation with the Board, at any time remove a member of the Board from his or her office if he or she is of the opinion that there are sufficient reasons for doing so.

[Subsec (3) amended by sec 49 of Act 2 of 2006.]

(4) Any vacancy on the Board arising from any circumstance referred to in subsection (2), or caused by the death of a member of the Board, shall be filled by the appointment of another person in accordance with the provisions of section 7, and every member so appointed shall hold office for the unexpired portion of the period of office of the member who has vacated his or her office or who has died.

(5) On the expiration of the period for which a Board member has been appointed, he or she shall continue to hold office until his or her successor has been appointed, but in no case shall

such further period exceed three months.

[Subsec (5) amended by sec 49 of Act 2 of 2006.]

(6)(a) The Minister shall, with the concurrence of the Minister of Finance, determine the remuneration and allowance payable from the funds of NAMCOL to the members of the Board and any committee of the Board, but any such allowance payable to a member who is in the full-time employment of the State shall be subject to the laws governing his or her conditions of employment.

(b) The remuneration and allowances determined under subsection (1) may differ according to the office held or the functions performed by the member concerned.

9 Meetings and decisions of Board

(1) The Board shall meet at least three times in every year at such times and places as the Chairperson of the Board may determine.

(2) The Chairperson shall-

(a) on request of the Minister; or

(b) on written request of at least one-third of the members of the Board,

convene a special meeting of the Board.

(3) The Chairperson of the Board or, in his or her absence, the Vice-Chairperson, shall preside at the meeting thereof, and if both the Chairperson and the Vice-Chairperson are absent from, or for any other reason unable to preside at any meeting, the members present shall elect one from among their number to act as chairperson at that meeting.

(4) The decision of the majority of the members of the Board present at a meeting thereof shall constitute a decision of the Board, and, in the event of an equality of votes relating to any matter, the member presiding at the meeting shall have a casting vote.

(5) No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that the Board did not consist of the full number of members referred to in section 7, or by reason only of the fact that a disqualified person was present or acted as a member of the Board at the time when such decision was taken or act was done, if the decision was taken or the act was authorised by the requisite majority of the members who were present at the time and entitled to sit as members.

(6) The Board shall cause a record to be kept of the proceedings at the meetings of the Board and any committee thereof, and the Minister may at any time require that any such record be

submitted to him or her for inspection.

10 Rules by Board

The Board may make rules, not inconsistent with the provisions of this Act, relating to-

- (a) the good management of the affairs of the Board and the effective execution of its functions;
- (b) the convening of, procedure at and quorum for meetings of the Board or a committee of the Board or the Management Committee;
- (c) the disciplinary measures and disciplinary procedures applicable to the staff and learners of NAMCOL;
- (d) the keeping of records, minutes and books of account,

and any other matter which the Board considers necessary or expedient for the effective carrying out of the objects of NAMCOL, or for the achievement of the purposes of this Act, and may make such rules in such manner as it may deem fit.

11 Submission of matters by Board to Minister for decision

- (1) The Board may of its own accord submit any matter to the Minister for decision.
- (2) In regard to any matter submitted to the Minister in terms of subsection (1), the Minister-
 - (a) shall give his or her decision after consultation with the Board; and
 - (b) may, either in general or in particular, determine such conditions as he or she may think fit,

and every such decision given or condition determined shall for all purposes be deemed to be a decision given or condition determined by the Board, and no such decision or condition may be withdrawn or amended by the Board except with the approval of the Minister.

12 Committees of Board

(1) The Board may from time to time establish committees to advise it on such matters as the Board may refer to it or to perform such functions of the Board as the Board may delegate or assign to it under section 23.

(2) A committee referred to in subsection (1) may consist of one or more members of the Board or so many other persons or so many members of the Board and other persons as the Board deems necessary, and the Board may at any time dissolve or reconstitute a committee.

Public Service Act, 1995 (Act 13 of 1995);

- (d) be the accounting officer of NAMCOL charged with accounting for moneys received and payments made by NAMCOL, and keep or cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of NAMCOL;
- (e) report to the Board on the activities of NAMCOL-
 - (i) at the end of each trimester; and
 - (ii) at the end of each financial year,

and exercise such powers and perform such other duties and functions as the Board may delegate or assign to him or her, or this Act may confer or impose.

(3) The Director shall, unless the Board otherwise directs, attend Board meetings, and may partake in discussions at such meetings, but shall not be entitled to vote.

15 Management Committee

(1) There shall be a Management Committee of NAMCOL, which shall consist of-

- (a) the Director, who shall be the chairperson;
- (b) all Deputy Directors;
- (c) the member of the Board referred to in section 7(1)(b);
- (d) the heads of such functional units as may be designated by the Board; and
- (e) such other members of staff as the Director may determine.

(2) The Management Committee shall-

- (a) subject to section 23, exercise such powers and perform such functions or duties of the Board or Director as the Board or Director may delegate or assign to it; and
- (b) assist the Director in the day to day running of NAMCOL and the supervision of staff and shall ensure that the regional network of centres and subcentres provide effective services and tuition to learners.

16 Staff of NAMCOL

(1) The establishment of NAMCOL shall be determined by the Board.

(2) The Board may from time to time, on the recommendation of the Director and upon such

conditions as it may determine, appoints as staff such persons as it deems necessary with a view to assist NAMCOL with all such work as may arise through the exercise and performance of its powers, duties and functions in terms of this Act, and may in its discretion dismiss any such member of staff from its service.

(3) The Board may second any member of the staff of NAMCOL, with his or her consent, to the service of any body or person for such period and on such conditions as the Board may determine.

(4) NAMCOL may, in addition to the staff referred to in subsection (2), be assisted in the performance of its functions by staff members in the Public Service who have been placed at the disposal of NAMCOL in terms of, and subject to, the provisions of section 23 of the Public Service Act, 1995 (Act 13 of 1995).

17 Learners' Representative Council

(1) The Board shall-

- (a) if a body is established by the learners of NAMCOL which the Board considers to be representative of such learners; and
- (b) if the constitution of such body is approved by the Board,

recognise such body as the Learners' Representative Council of NAMCOL.

(2) The composition, mode of election, terms of office, powers and privileges, functions and duties of the Learners' Representative Council shall be governed by its constitution.

(3) No amendment of the constitution of the Learners' Representative Council shall be of force unless such amendment has been approved by the Board.

18 Training programmes and courses, and proof of proficiency

(1) NAMCOL may offer such training programmes and courses as it may deem necessary to prepare learners to attain the standard of proficiency in examinations or other tests arranged, controlled and conducted-

- (a) by NAMCOL; or
- (b) by bodies other than NAMCOL, whether such bodies are situated in Namibia or not.

(2) NAMCOL shall not confer a certificate of proficiency upon any learner; unless such learner has-

- (a) attained the necessary standard of proficiency in an examination or other test; and
- (b) satisfied such other requirements as the Board or the body in question as contemplated in paragraph (b) of subsection (1) may determine.

(3) The medium of instruction at NAMCOL shall be English, provided that other languages may be taught as courses.

19 Admission of learners to NAMCOL

(1) The requirements for enrolment as a learner with NAMCOL and the renewal and cancellation of such enrolment shall be determined by the Board upon the recommendation of the Director.

(2) Every person who enrolls as a learner with NAMCOL shall be enrolled for such period as the Board may in general or in a particular case determine, and after the expiry of such period, that person shall, if he or she wishes to remain a learner with NAMCOL, renew his or her enrolment.

(3) Subject to the provisions of subsections (4) and (5) and section 25(1), the Board may-

- (a) prescribe minimum requirements of study for the purpose of the renewal of the enrolment of a person as a learner with NAMCOL;
- (b) refuse permission to a learner who fails to satisfy the minimum requirements of study so prescribed to renew his or her enrolment;
- (c) refuse permission to a person to enrol as a learner of NAMCOL, provided that the Board shall, upon request, give written reasons for such refusal.

(4) No restriction of whatever nature shall be imposed on the admission of any person as a learner with NAMCOL on the grounds of such person's race, gender or religious belief, nor shall any preference be given to, or advantage be withheld from, any person at NAMCOL on the grounds of his or her race, gender or religious belief.

(5) The fees payable by a learner for enrolment as a learner, for study materials or tuition, and for registration for examinations or other tests regulated by NAMCOL shall be determined by the Board in consultation with the Minister, and learners shall be required to pay the specified fees prior to admission for studies or, if such examinations or tests are controlled by NAMCOL, prior to sitting for the examinations or tests in question.

(6) A learner shall be subject to such disciplinary provisions as the rules made by the Board may prescribe.

20 Funds of NAMCOL, financial year, estimates of revenue and expenditure and auditing of accounts

(1) The funds of NAMCOL shall consist of-

- (a) all moneys appropriated by Parliament for the realization of the objects of NAMCOL;
- (b) subsidies granted by the Minister; with the concurrence of the Minister of Finance, in respect of capital and normal recurrent expenditure of NAMCOL on the basis of principles mutually agreed upon by the Minister, the Minister of Finance and NAMCOL; and
- (c) such other moneys as may from time to time accrue, become payable, or be donated to NAMCOL.

(2) NAMCOL shall apply its funds, in accordance with the relevant approved estimates of expenditure, to defray the expenses in connection with the performance of its functions, but shall apply any donation received in accordance with the conditions, if any, determined by the donor concerned.

(3) The financial year of NAMCOL shall end on 31 March in each year.

(4) The Board shall submit to the Minister-

(a)

[Para (a) deleted by sec 49 of Act 2 of 2006.]

(b) once during every financial year a report on its activities; and

(c) as soon as possible, but not later than six months after the end of any financial year, certified copies of its audited financial statements in respect of that financial year.

(5) The Board shall cause the books of account, accounting statements and annual financial statements of NAMCOL to be audited by a person registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) as an accountant and auditor and appointed, with the concurrence of the Auditor-General, by the Board.

(6) The report and financial statements referred to in paragraphs (b) and (c) of subsection (4) shall be laid upon the Table of the National Assembly by the Minister within 30 days after it became available, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

21 Exemptions from taxes and charges

(1) No tax or charge on income imposed under any law shall be payable by NAMCOL.

(2) No transfer duty, stamp duty, office fee or other moneys shall be payable in respect of the transfer of property to NAMCOL.

22 Indemnity

A member of the Board or of any committee of the Board, the Director, Deputy Director, or a member of the staff of NAMCOL shall not be personally liable for any damage or loss arising out of any act done by him or herself in good faith under this Act unless such loss or damage is due to his or her wilful misconduct, dishonesty, gross negligence or failure to comply with any provision of the Act.

23 Delegation of Powers and assignment of Functions

(1) The Board may in writing-

- (a) delegate any power conferred on it by or under any provision of this Act, excluding the power to make rules, to the Director or a Deputy Director, the Management Committee or any other committee established under section 12, any member of the Management Committee or such committee or any member of the staff of NAMCOL; or
- (b) assign the performance of any function or duty entrusted to the Board by or under this Act to the Director or a Deputy Director, the Management Committee or such other committee, any member of the Management Committee or such other committee or any member of the staff of NAMCOL.

(2) The Director may in writing-

- (a) delegate any power conferred on him or her by or under this Act, to any Deputy Director, the Management Committee or any member of the Management Committee or any member of the staff of NAMCOL; or
- (b) assign the performance of any function or duty entrusted to him or her by or under this Act to any Deputy Director, the Management Committee or any member of the Management Committee or any member of the staff of NAMCOL.

(3) A delegation or assignment under subsection (1) or (2) may be made subject to such conditions and restrictions as may be determined by the Board or the Director, as the case may be, and may be withdrawn or amended by it or him or her.

(4) The Board or the Director shall not be divested of a power or function or duty delegated or assigned by it or him or her in terms of subsection (1) or (2), and may, subject to the provisions of subsection (5), amend or withdraw any decision made in the exercise of such delegated powers

or performance of such assigned functions or duties.

(5) A decision made in the exercise or performance of any power or function or duty delegated or assigned under subsection (1) or (2) and by which a right has been conferred upon any person, shall not be set aside or varied.

(6) Where a power or function or duty is delegated or assigned under subsection (1) or (2) to the holder of an office, such delegation or assignment shall be deemed to have been made to the holder for the time being of the office or to any person at any time lawfully acting in the capacity of such holder

24 Regulations

The Minister may, with the concurrence of the Board, make regulations as to matters that in the opinion of the Minister are necessary or expedient to give effect to the provisions of this Act.

25 Transitional provisions and savings

(1) Any person who at the date of commencement of this Act is registered or provisionally registered for a course in the Continuing Education Programme with the Directorate: NAMCOL in the Ministry of Basic Education and Culture shall, with effect from that date, be so registered or provisionally registered, as the case may be, as a learner with NAMCOL, and such course shall, as from that date, be offered by NAMCOL.

(2) Any person who, at the commencement of this Act, holds office as a member of the board known as the Interim Development Board in the Ministry of Basic Education and Culture shall, with effect from that commencement, be deemed to have been appointed by the Minister under section 7(1)(c) as a member of the Board of Governors for a period of office of one year, but shall at the expiration of such period be eligible for reappointment as such a member

26 Transfer of assets, rights, liabilities and obligations to NAMCOL

(1) The Minister may, with the concurrence of the Minister of Finance, transfer to NAMCOL any movable or immovable property-

- (a) belonging to the State; and
- (b) which immediately prior to the commencement of this Act was being utilized by the Directorate referred to in section 25(1), to enable NAMCOL to perform its functions or to achieve its objects.

(2) As from the date of a transfer contemplated in subsection (1), all rights, liabilities and obligations connected to any such immovable or movable property shall vest in NAMCOL.

(3) No compensation shall be payable to the State in respect of any property transferred to NAMCOL in terms of subsection (1).

(4) The Registrar of Deeds shall without payment of transfer duty, stamps duty or any other fee or charge and on production to him or her of the title deed of any immovable property transferred to NAMCOL in terms of subsection (1), endorse such title deed to the effect that the immovable property described therein is vested in NAMCOL, and shall make the necessary entries or endorsements in or on any relevant register or other document in his or her office.

27 Administration of Act

The President may by proclamation in the *Gazette* assign the administration of this Act to any Minister, and may determine that any power or duty conferred or imposed by this Act on such Minister shall be exercised or carried out by that Minister after consultation with one or more other Ministers.

28 Short title and commencement

This Act shall be called the Namibian College of Open Learning Act, 1997, and shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.