

Namibia

Export Processing Zones Act, 1995

Act 9 of 1995

Legislation as at 15 November 2007

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Republic of Namibia
Annotated Statutes

Export Processing Zones Act, 1995 Act 9 of 1995

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[Amended by Export Processing Zones Amendment Act, 1996 (Act 6 of 1996) on 25 June 1996]

[Amended by Electricity Act, 2007 (Act 4 of 2007) on 15 November 2007]

ACT

To provide for the establishment, development and management of export processing zones in Namibia, and to provide for matters incidental thereto.

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

Part I – Definitions

1. Definitions

In this Act, unless the context otherwise indicates -

“**company**” means a company established in terms of the Companies Act, 1973 (Act 61 of 1973) and includes a close corporation established in terms of the Close Corporations Act, 1988 (Act 26 of 1988);

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

“**competent authority**”, in the case of a single-factory export processing zone, means the export processing zone enterprise in such zone, and in the case of any other export processing zone, means the export processing zone management company appointed in terms of section 10 in respect of such export processing zone;

“**customs officer**” means an officer defined in the Customs and Excise Act, 1964 (Act 91 of 1964);

[The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998.]

“**export processing zone**” means an export processing zone established under section 2 or by section 19;

“**export processing zone enterprise**” means an export processing zone enterprise established under section 14 and which holds a registration certificate issued under that section, and includes a single-factory export processing zone enterprise;

“**export processing zone management company**” means an export processing zone management company appointed by the Minister in terms of section 10 in respect of an export processing zone;

“**foreign currency**” means currency other than local currency;

“**local currency**” means Namibia currency issued in accordance with section 17 of the Bank of Namibia Act, 1990 (Act 8 of 1990), together with the currency of the Republic of South Africa for so long as the last-mentioned currency is authorized by the Bank of Namibia to be freely exchanged at par, and without commission, for Namibia currency;

[The Bank of Namibia Act 8 of 1990 has been replaced by the Bank of Namibia Act 15 of 1997; section 60(2) of Act 15 of 1977 provides that anything done in terms of a provision of Act 8 of 1990 shall be deemed to have been done in terms of the corresponding provision of Act 15 of 1997.]

“**manufacture**” means the application of any operation or process for the conversion by manual or mechanical means of materials by changing the composition, shape, size, nature or quality of such materials, including the assembly of parts or components, into a new product or article, but does not include the installation of machinery or equipment for the purpose of construction, or the packing, dividing into lots, sorting, grading or marking of any material, product or article;

“**Minister**” means the Minister of Trade and Industry;

“**Offshore Development Company**” means the company appointed in terms of section 26(1) as the Offshore Development Company;

“**Permanent Secretary**” means the Permanent Secretary: Trade and Industry;

“**prescribed**” means prescribed by regulation;

“**single-factory export processing zone**” means an export processing zone comprising only one export processing zone enterprise;

“**single-factory export processing zone enterprise**” means a single-factory export processing zone enterprise established under subsection (1) of section 2 and which holds a registration certificate issued under subsection (3) of that section;

“**this Act**” includes any regulation made under this Act.

Part II – Export processing zones

2. Establishment of export processing zones

- (1) The Minister may, in consultation with the Minister of Finance, by notice in the Gazette -
 - (a) establish in any area, or declare any area as, an export processing zone; and
 - (b) determine the location and extent, and define the physical characteristics or boundaries of an export processing zone contemplated in paragraph (a).
- (2) An export processing zone established or declared under subsection (1) may consist of a developed, partly developed or undeveloped area of land or may comprise a single-factory unit or a group of factory units.
- (3) The Minister may, when establishing a single-factory export processing zone under the provisions of subsection (1), upon application by the owner of the single factory issue in the name of such owner a single-factory export processing zone enterprise certificate.

- (4) A single-factory export processing zone enterprise certificate referred to in subsection (3) shall be valid for such period, be in such form and contain such particulars as the Minister may, in consultation with the Minister of Finance, determine.

3. Objects and purposes of export processing zones

The objects and purposes of export processing zones are -

- (a) to attract, promote or increase the manufacture of export goods;
- (b) to create or increase industrial employment;
- (c) to create or expand export earnings;
- (d) to create or expand industrial investment, including foreign investment; and
- (e) to encourage technology transfer and the development of management and labour skills,

in Namibia.

4. Restrictions on entering into, residence in, conducting of business in or the bringing of certain articles or substances into, export processing zones

- (1) No person shall -
- (a) unless authorized thereto in writing by the Minister, acting in consultation with the Minister of Finance -
 - (i) conduct any business or undertaking in retail trade in an export processing zone in respect of any goods manufactured in, or imported into, such export processing zone;
 - (ii) remove any goods manufactured in an export processing zone from such export processing zone for any purpose other than removal to another export processing zone or for export to a country other than Namibia; or
 - (iii) use any goods manufactured in an export processing zone for consumption in such export processing zone or in any other export processing zone; or
 - (b) unless authorized thereto in writing by the competent authority concerned -
 - (i) subject to the provisions of subsection (2) or (4), enter or leave an export processing zone; or
 - (ii) reside in an export processing zone.
- (2) The provisions of paragraph (b)(i) of subsection (1) shall not apply to or in respect of -
- (a) members of the Namibian Police or Namibian Defence Force;
 - (b) members of the public service, including customs officers or municipal officials; or
 - (c) employees of the South West Africa Water and Electricity Corporation (Proprietary) Limited, acting in the course of their respective duties.
- (3) Except where the Minister, in consultation with the competent authority concerned, in writing otherwise directs, the goods or articles specified or referred to in this subsection shall, subject to the provisions of subsection (4), not be brought into, or be allowed to remain in, an export processing zone -
- (a) firearms or ammunition, or other war material as the Minister may prescribe;
 - (b) explosives referred to in the Explosives Act, 1956 (Act 26 of 1956) or hazardous substances referred to in the Hazardous Substances Ordinance, 1974 (Ordinance 14 of 1974);

- (c) dependence-producing substances or dangerous dependence-producing drugs as defined in the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971);
 - (d) scheduled substances as defined in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965), excluding such scheduled substances prescribed by a medical practitioner for the use or consumption by the person who has such scheduled substances in his or her possession;

[The Medicines and Related Substances Control Act 101 of 1965 has been replaced by the Medicines and Related Substances Control Act 13 of 2003.]
 - (e) veterinary medicines as defined in the Veterinary and Para-Veterinary Professions Proclamation, 1984 (Proclamation AG. 14 of 1984), excluding such veterinary medicines dispensed by a veterinary surgeon for use in the treatment of any animal belonging to or in the care of the person who has such veterinary medicines in his or her possession;

[The Veterinary and Para-veterinary Professions Proclamation AG 14 of 1984 has been replaced by the Veterinary and Veterinary Para-Professions Act 1 of 2013.]
 - (f) any narcotic, drug or other substance defined or referred to in -
 - (i) the Single Convention on Narcotic Drugs, 1961;
 - (ii) the Convention on Psychotropic Substances, 1971; or
 - (iii) the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,of the United Nations, or any other narcotic, drug, medicine or substance declared illegal or prohibited by any international convention to which Namibia has succeeded or acceded, or by or under any law;
 - (g) any item prohibited in terms of a notice under section 2 of the Import and Export Control Act, 1994 (Act 30 of 1994); or
 - (h) any other article, item, substance or thing which the Minister, in consultation with the competent authority concerned, may prescribe.
- (4) The provisions of subsection (3) shall not apply to or in respect of members of the Namibian Police Force or Namibian Defence Force, or customs officers, acting in the course of their respective duties.
- (5) The Minister may by notice in writing addressed to an export processing zone management company, an export processing zone enterprise or any person in an export processing zone -
- (a) impose conditions relating to the regulation, restriction or prohibition of the entry of goods, or categories of goods, into an export processing zone; or
 - (b) order such export processing zone management company, export processing zone enterprise or person in an export processing zone to, within a period of time, which shall not be less than seven days -
 - (i) remove from such export processing zone the article, item or thing; or
 - (ii) discontinue any activity or operation in such export processing zone,as the Minister may specify in such notice.
- (6) An addressee who receives a notice under subsection (5) may, within a period of three days after receipt of such notice, make written representations to the Minister relating to any condition imposed by, or order contained in, such notice.

- (7) Any person who contravenes a provision of subsection (1) or (3), or fails to comply with a notice under subsection (5), shall be guilty of an offence and on conviction be liable -
- (a) if such person is a natural person, to a fine not exceeding N\$12 000 or to a period of imprisonment not exceeding three years or to both such fine and such imprisonment; and
 - (b) if such person is not a natural person, to a fine not exceeding N\$25 000.

Part III – Application of laws in export processing zones and export and import

5. Application of laws in export processing zones, and export and import

- (1) Subject to the provisions of subsections (2) and (6) -
- (a) no sales tax leviable in terms of section 5 of the Sales Tax Act, 1992 (Act 5 of 1992) shall be payable in an export processing zone;
[The Sales Tax Act 5 of 1992 has been replaced by the Value-Added Tax Act 10 of 2000. Section 88(2) of Act 10 of 2000 states: “No reference in any other law to sales tax or to additional sales levy shall be construed as a reference to tax under this Act.”]
 - (b) no additional sales duty leviable in terms of section 5 of the Additional Sales Duties Act, 1993 (Act 11 of 1993), or customs or excise duty, as the case may be, leviable in terms of the provisions of the Customs and Excise Act, 1964 (Act 91 of 1964) shall be payable in an export processing zone in respect of goods imported into or manufactured in such export processing zone;
[The Additional Sales Levy Act 11 of 1993 has been replaced by the Value-Added Tax Act 10 of 2000. Section 88(2) of Act 10 of 2000 states: “No reference in any other law to sales tax or to additional sales levy shall be construed as a reference to tax under this Act.” The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998.]
 - (c) no instrument executed in or outside an export processing zone which relates to the transfer, hypothecation or lease of any movable or immovable property in or situate in an export processing zone, or any act to be performed or done in such export processing zone, or any document, certificate, instrument, report or record relating to any activity, action, operation, enterprise, project, undertaking or venture in an export processing zone, including -
 - (i) a mortgage bond;
 - (ii) customs and excise documents;
 - (iii) a hire-purchase agreement or financial lease;
 - (iv) an agreement of partnership;
 - (v) a power of attorney;
 - (vi) a deed of transfer;
 - (vii) bills of exchange; or
 - (viii) promissory notes,shall be subject to any duty imposed by the Stamp Duties Act, 1993 (Act 15 of 1993);
 - (d) no transfer duty leviable in terms of section 2 of the Transfer Duty Act, 1993 (Act 14 of 1993) shall be payable in respect of the acquisition of any immovable property situate in an export processing zone; and
 - (e) for the purposes of the application of the provisions of the Town Planning Ordinance, 1954 (Ordinance 18 of 1954), of the Townships and Division of Land Ordinance, 1963

(Ordinance 11 of 1963) or of the Expropriation Ordinance, 1978 (Ordinance 13 of 1978) in an export processing zone, any reference to a local authority in any provision of any of those Ordinances shall be construed as a reference to an export processing zone management company, acting with the consent of the Minister.

- (2) No duty or tax on any goods exported from Namibia into an export processing zone, paid in Namibia in terms of the provisions of any law referred to in subsection (1), shall be refunded.
- (3) Goods removed from an export processing zone into Namibia, excluding -
 - (a) goods in transit to a destination outside Namibia or to another export processing zone;
 - (b) goods temporarily removed from, or which have temporarily been in, such export processing zone; or
 - (c) goods removed from one export processing zone to another export processing zone,

shall, for the purposes of the Customs and Excise Act, 1964 (Act 91 of 1964), the Sales Tax Act, 1992 (Act 5 of 1992) and the Additional Sales Duties Act, 1993 (Act 11 of 1993) be deemed to be goods imported into Namibia.

[The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998. The Sales Tax Act 5 of 1992 and the Additional Sales Duties Act 11 of 1993 have both been replaced by the Value-Added Tax Act 10 of 2000. Section 88(2) of Act 10 of 2000 states: "No reference in any other law to sales tax or to additional sales levy shall be construed as a reference to tax under this Act."]

- (4) Goods removed from Namibia into an export processing zone shall be deemed to be goods exported from Namibia.
- (5) The movement of goods from an export processing zone shall be subject to the provisions of the Import and Export Control Act, 1994 (Act 30 of 1994) and the supervision and procedures of the Office of the Commissioner for Customs and Excise referred to in section 1A of the Customs and Excise Act, 1964 (Act 91 of 1964).

[The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998.]

- (6) In the application of the provisions of paragraphs (a) and (b) of subsection (1) to motor vehicles, the provisions of those paragraphs shall apply only to motor vehicles -
 - (a) manufactured or assembled in; or
 - (b) used exclusively in, or for the delivery of products manufactured in,

an export processing zone, irrespective of whether such delivery is performed inside or outside such export processing zone.

- (7) The vehicles referred to in paragraph (b) of subsection (6) shall be marked for identification purposes as may be prescribed by the Minister in consultation with the Minister of Finance.

6. Customs and Excise operations in export processing zones

- (1) The Office of the Commissioner for Customs and Excise referred to in subsection (5) of section 5 shall in each export processing zone establish and maintain an office for the purpose of performing the functions referred to in subsections (3) or (5) of that section, if the establishment of such an office will require the full-time services of a customs officer and is, in the opinion of the Minister of Finance, justifiable.
- (2) The costs pertaining to the establishment, maintenance and running of an office in terms of subsection (1) shall be borne by the competent authority concerned.

- (3) Goods manufactured in an export processing zone may, subject to the application of such criteria relating to the local content, process of manufacturing and cost of labour performed as shall be prescribed, be certified by the Commissioner for Customs and Excise to be goods manufactured in Namibia.

7. Application of the Income Tax Act, 1981

- (1) The Income Tax Act, 1981 (Act 24 of 1981) shall be applied in an export processing zone subject to the provisions of subsection (2).
- (2) No export processing zone management company and no export processing zone enterprise shall be liable to taxation in terms of the provisions of the Income Tax Act, 1981 in respect of income derived in an export processing zone.

8. Application of the Labour Act, 1992

[The Labour Act 6 of 1992 has been replaced by the Labour Act 11 of 2007. Section 16 of the Labour Act 11 of 2007 provides that “any reference to a provision of the previous Act must be read as if it were a reference to the corresponding provision of this Act, in so far as possible”.]

- (1) The provisions of the Labour Act 1992 (Act 6 of 1992) shall be applicable in an export processing zone, subject to the provisions of this section.
- (2) Notwithstanding the provisions of sections 79 and 81 of the Labour Act, 1992, but subject to subsection (10) of this section -
 - (a) no employer or employee shall take action by way of, or participate in, a lock-out or strike in an export processing zone; and
 - (b) no employee, office-bearer or official of a trade union shall be entitled to perform in an export processing zone the act of peacefully persuading any other person to perform any work or not to so perform any work, if such action is in furtherance of a strike by virtue of the provisions of section 79(1)(c)(ii) of the Labour Act, 1992, as contemplated in subsection (3) of section 81 of that Act.
- (3) The Minister may, in accordance with the provisions of section 15(1) of this Act, cancel the export processing zone enterprise certificate held by an employer who takes any action by way of a lock-out in contravention of subsection (2)(a).
- (4) Where an employee is dismissed or is imposed a disciplinary penalty by reason of the fact that such employee -
 - (a) took action by way of, or participated in, a strike in contravention of subsection (2)(a); or
 - (b) performed any act referred to in subsection (2)(b),the provisions of section 46(3) of the Labour Act, 1992, shall, subject to subsection (10) of this section, not apply in an export processing zone.
- (5) Where a dispute of interests occurs in an export processing zone, every employer and employee or, where applicable, every employers' organization and trade union, who or which is a party to such dispute shall forthwith report the dispute to the Commissioner in accordance with section 74 of the Labour Act, 1992, notwithstanding the provisions of subsection (1) of that section.
- (6) If a conciliation board fails to resolve a dispute referred to in subsection (5), the parties involved in the dispute shall act in accordance with the provisions of section 79(1)(c)(i) of the Labour Act, 1992.
- (7) If, contrary to the provisions of subsection (2) of this section -
 - (a) any employees in an export processing zone take action by way of, or participate in, a strike; or

(b) any employer in an export processing zone takes action by way of a lock-out,

the employer or the employers' organization or the employees or the trade union concerned, as the case may be, may, subject to section 82 of the Labour Act, 1992, apply to the Labour Court for relief by way of an interdict restraining such employees or employer from continuing with such strike or lock-out action, or restraining any employers' organization or trade union involved, or any office-bearer or official of such an organization or union, from participating in or instigating or inciting such action, and any such application shall be justiciable as if it were an application referred to in section 18(1)(b)(i) of the Labour Act, 1992.

- (8) The provisions of subsection (7) shall not derogate from any right or power of any person or authority to take any other action provided for in the Labour Act, 1992, as applied by this section, in the event of any occurrence referred to in that subsection.
- (9) For the purposes of this section, the expressions "Commissioner", "conciliation board", "dispute of interests", "employee", "employer", "employers' organization", "Labour Court", "lock-out", "strike" and "trade union", shall bear the meanings assigned to them in the Labour Act, 1992.

[In the amending Act, a superfluous "." appears at the end of subsection (9). This punctuation should have appeared at the end of subsection (10) in the amending Act, to mark the end of the substituted section, and so has been omitted here.] (10) The provisions of this section shall be deemed to have been repealed if not re-enacted by Parliament within a period of five years after the commencement date of the Export Processing Zones Amendment Act, 1996.]

[section 8 substituted by Act 6 of 1996]

9. Application of the Foreign investment Act, 1990

[The word "investment" in the heading should be capitalised.]

The provisions of the Foreign Investment Act, 1990 (Act 27 of 1990) shall not apply in an export processing zone.

Part IV – Export processing zone management companies

10. Appointment of export processing zone management company

- (1) Every export processing zone shall be developed or managed by a body corporate, to be known as an export processing zone management company, appointed by the Minister for such purposes by notice in the Gazette, subject to such conditions -
- (a) as may be prescribed; or
 - (b) as the Minister, upon such appointment, may determine and which shall be specified in an agreement entered into by and between the Minister and such export processing zone management company prior to such appointment.
- (2) Different conditions referred to in subsection (1) may be prescribed, determined or agreed upon for different, or different categories of, export processing zones.
- (3) Upon appointment of an export processing zone management company in terms of the provisions of subsection (1), the Minister shall issue to such company a certificate of appointment in such form as the Minister may determine.
- (4) A certificate of appointment issued in terms of subsection (3) shall contain all the conditions subject to which such certificate was issued, or a reference to such conditions.
- (5) The conditions contemplated in paragraph (b) of subsection (1) may, subject to the provisions of section 11, only be amended with the consent of the export processing zone management company concerned.

11. Cancellation of appointment of export processing zone management company or amendment of conditions

Notwithstanding the provisions of subsection (5) of section 10, the appointment of an export processing zone management company in terms of subsection (1) of that section may be cancelled, or the conditions contemplated in paragraph (b) of subsection (1) of that section subject to which such appointment was made, may be amended by the Minister after 30 days notice to such company, if such company -

- (a) in the opinion of the Minister, contravenes any, or fails to comply with all, the conditions subject to which such company was so appointed;
- (b) is placed under judicial management, whether in terms of a provisional or final order;
- (c) enters into a compromise or arrangement with its creditors, or any one of them;
- (d) is deemed to be unable to pay its debts as contemplated in section 345 of the Companies Act, 1973 (Act 61 of 1973);

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]
- (e) is wound up, whether by the Court or voluntarily, and whether in terms of a provisional or final order; or
- (f) is found guilty of the contravention of any provision of the Companies Act, 1973, or of any provision of this Act.

12. Development and management of export processing zone

- (1) An export processing zone management company shall, in accordance with the provisions of this Act and the provisions of the agreement contemplated in paragraph (b) of subsection (1) of section 10, develop the export processing zone in respect of which it was appointed in terms of the provisions of that section as an export processing zone management company, and shall in such export processing zone provide and maintain such amenities and services as may be specified in such agreement or are prescribed by this Act.
- (2) An export processing zone management company shall manage the export processing zone referred to in subsection (1) in accordance with the provisions of this Act and the provisions of the agreement referred to in that subsection.

13. Powers, duties and functions of an export processing zone management company

- (1) For the purposes of developing and managing an export processing zone in terms of the provisions of section 12, an export processing zone management company shall, subject to the provisions of subsection (2) and of section 22 and of the agreement referred to subsection (1) of section 12 -
 - (a) establish, to the satisfaction of the Minister, adequate fencing, walls, enclosures or demarcations to identify and secure the export processing zone;
 - (b) subdivide the export processing zone into erven, streets and public places as may be prescribed, erect buildings for industrial or commercial purposes and let or sublet such buildings or any other land, or sell such land, in the export processing zone to export processing zone enterprises;
 - (c) construct and maintain streets and public places;
 - (d) supply water to the export processing zone enterprises in the export processing zone for human consumption or business or industrial purposes;
 - (e) provide, maintain and operate a system of sewerage, drainage and refuse removal for the benefit of the export processing zone enterprises in the export processing zone;

- (f) subject to the Electric Power Proclamation, 1922 (Proclamation 4 of 1922), supply electricity or gas to the export processing zone enterprises operating in the export processing zone;
 - (g) establish, maintain and operate an ambulance and fire brigade service in the export processing zone;
 - (h) provide such other services and perform such other functions and duties as may be prescribed or as may be specified in the agreement contemplated in section 10(1)(b);
 - (i) establish and maintain an office in the export processing zone; and
 - (j) have such other powers, duties and functions as may be prescribed by the Minister after consultation with the Offshore Development Company.
- (2) An export processing zone management company referred to in subsection (1) may, with the consent of the Minister -
- (a) subcontract any person to execute any power or perform any function or duty such management company has in terms of that subsection;
 - (b) impose levies or charges for services rendered or facilities provided in the export processing zone; or
 - (c) in consultation with the Minister of Finance and subject to the provisions of subsection (3), transfer the interests of such management company in the export processing zone to another person.
- (3) The provisions of section 10 shall mutatis mutandis apply to a person referred to in paragraph (c) of subsection (2) to which the interests referred to in that paragraph are transferred in terms of the provisions of that paragraph.

Part V – Export processing zone enterprises

14. Export processing zone enterprises

- (1) Subject to the provisions of subsection (6), no person shall establish or conduct an enterprise in an export processing zone unless such person is in the possession of an export processing zone enterprise certificate issued in terms of subsection (2) in such person's name, authorizing such person to establish or conduct such enterprise in such export processing zone.
- (2) Upon application by a person to establish or conduct an export processing zone enterprise in an export processing zone, the export processing zone management company appointed for such export processing zone may, in consultation with the Minister, the Minister of Finance and the Bank of Namibia, and subject to the provisions of subsection (5), grant such application and issue an export processing zone enterprise certificate in the name of the applicant.
- (3) (a) An application in terms of subsection (2) shall be in such form, contain such particulars and be submitted in such manner; and
- (b) an export processing zone enterprise certificate referred to in subsection (2) shall be valid for such period, be in such form and contain such particulars,
- as the export processing zone management company concerned may, in consultation with the Minister and the Minister of Finance, determine.
- (4) An export processing zone management company shall submit to the Minister and to the Minister of Finance -
- (a) a copy of every export processing zone enterprise certificate issued by it in terms of subsection (2); and

- (b) such information relating to the holder of such export processing zone certificate as the Minister or the Minister of Finance may in writing request.
- (5) No export processing zone enterprise certificate shall be issued to any person in respect of an enterprise -
- (a) the activities of which shall or may have a deleterious impact on the environment;
 - (b) which shall utilize any materials or produce any goods which are prohibited in Namibia;
 - (c) which does not comply with the requirements prescribed by the Minister after consultation with the Minister of Finance and the export processing zone management company concerned;
 - (d) which shall not make investments in the export processing zone which shall result in the creation of employment or export earnings;
 - (e) which does not or does not have the intention to conduct the business of manufacturing, exporting or importing in the export processing zone concerned; or
 - (f) which conducts a retail business in the export processing zone concerned.
- (6) The provisions of subsections (1), (2), (3) and (4) shall not apply to a single-factory export processing zone.
- (7) The provisions of section 322 of the Companies Act, 1973 (Act 61 of 1973) shall not apply to an export processing zone enterprise.

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

15. Cancellation of export processing zone enterprise certificate

- (1) The Minister may, on the recommendation of the Offshore Development Company and the export processing zone management company concerned, or in the case of a single-factory export processing zone, on the recommendation of the Offshore Development Company only, and after 30 days written notice to the holder of an export processing zone enterprise certificate, cancel such export processing zone enterprise certificate if such holder or the export processing zone enterprise concerned -
- (a) fails to comply with any of the provisions of this Act or the conditions subject to which such certificate was issued;
 - (b) suspends its activities in the export processing zone for a period of more than two months without the prior written consent of the export processing zone management company concerned; or
 - (c) has in his or her application in terms of section 2(3) or 14(2) furnished any false or incorrect information.
- (2) The holder of an export processing zone enterprise certificate may within 21 days after receipt of a notice in terms of subsection (1), make written representations to the Minister, which representations the Minister shall take into account when considering the recommended cancellation of such export processing zone enterprise certificate.
- (3) Unless an agreement to the contrary has been entered into between the holder of an export processing zone enterprise certificate and the export processing zone management company concerned, the holder of such export processing zone enterprise certificate may give two months written notice to such management company of cancellation of such export processing zone enterprise certificate and the agreement concerned, and shall upon the expiration of such two-month period, surrender such export processing zone enterprise certificate to such management company.

Part VI – Expropriation, compensation, disputes and offences relating to foreign currency

16. Expropriation and compensation

- (1) No property in an export processing zone or any part thereof, or interest in or right over any such property, shall be expropriated except in accordance with the provisions of the Expropriation Ordinance, 1978 (Ordinance 13 of 1978) and subject to the provisions of Article 16(2) of the Namibian Constitution.
- (2) Where any property referred to in subsection (1) is expropriated, the Government of Namibia shall, subject to the provisions of section 17, pay to the owner of such property just compensation in respect of such expropriation without undue delay and in freely convertible currency.

17. Settlement of disputes

- (1) If a person to whom an export processing zone management certificate or an export processing zone enterprise certificate, as the case may be, is to be issued under this Act so elects, the certificate concerned may provide that any dispute between the holder of the certificate and the Minister in respect of -
 - (a) any issue relating to the amount of, or any other matter in connection with, any compensation payable in a case of expropriation as provided in section 16; or
 - (b) the validity or continued validity of such export processing zone management certificate or export processing zone enterprise certificate,shall be settled by arbitration.
- (2) A certificate referred to in subsection (1) which makes provision for arbitration as provided for in that subsection, shall constitute the consent of the holder of such certificate and the Government of Namibia to submit to arbitration in the manner provided in such certificate.
- (3) Any award in any arbitration contemplated in this section shall be final and binding on the Government and on the holder of a certificate referred to in subsection (1).
- (4) Nothing in this section shall be construed -
 - (a) in a case where a certificate referred to in subsection (1) does not make provision for the settlement of disputes, as restricting or limiting the right of the holder of such certificate, in the event of a dispute, to any remedy available to such holder in; or
 - (b) in a case where a certificate referred to in subsection (1) does make provision for the settlement of disputes, as precluding the holder of such certificate and the Minister from entering into an agreement providing that any particular dispute specified or contemplated in such agreement shall not be settled as provided in such certificate, but shall be heard and finally determined by,
any competent court in Namibia.

18. Offences relating to certificates or foreign currency

Any person who -

- (a) in or in connection with an application for the granting of an export processing zone management certificate or an export processing zone enterprise certificate, as the case may be; or

- (b) for the purpose of obtaining or retaining any foreign currency,

under the provisions of this Act, makes any false statement which he or she knows to be false or does not believe to be true, or knowingly furnishes any false information, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

Part VII – Special provisions applicable to the Walvis Bay Export Processing Zone

19. Establishment of the Walvis Bay Export Processing Zone

- (1) There is hereby established an export processing zone to be known as the Walvis Bay Export Processing Zone, in this Part referred to as “the export processing zone”.
- (2) The Minister may, in consultation with the Minister of Finance and with the local authority of Walvis Bay, by notice in the Gazette, determine the location and extent and define the boundaries of the area of the export processing zone established by subsection (1).
- (3) The export processing zone may consist of different areas of land.
- (4) The Local Authorities Act, 1992 (Act 23 of 1992) shall, subject to the provisions of subsection (5) of this section and of subsection (3) of section 22, not apply in the export processing zone.
- (5) The regulations applicable in the local authority area of the Municipality of Walvis Bay shall, subject to the provisions of section 24, mutatis mutandis apply in the export processing zone.

20. Objects of the Walvis Bay Export Processing Zone Management Company

The Walvis Bay Export Processing Zone Management Company, in this Part referred to as “the Management Company”, to be appointed for the export processing zone by the Minister in terms of section 10, shall after such appointment -

- (a) develop and manage; and
- (b) supply such services in,

the export processing zone as may be specified in the agreement, or as the Minister may prescribe or determine, as contemplated in subsection (1) of that section.

21. Powers, duties and functions of the Walvis Bay Export Processing Zone Management Company

In addition to the powers, duties and functions of the Management Company in terms of the provisions of this Act, the Minister may prescribe additional powers, duties or functions not inconsistent with the provisions of this Act which the Management Company may execute or perform.

22. Special provisions relating to the supply of water and the rendering of sewerage and other services

[heading amended by Act 4 of 2007]

- (1) The Management Company shall, subject to the provisions of subsection (2) or (5), procure from the Municipality of Walvis Bay, and from no other supplier, water for distribution to export processing zone enterprises or other persons in the export processing zone.

[subsection (1) amended by Act 4 of 2007]

- (2) The Management Company and the Municipality referred to in subsection (1) shall, subject to the provisions of subsection (5), enter into an agreement in terms of which agreement that

Municipality shall render to the Management Company the services contemplated in subsection (1), sewerage services and such other services as may be specified in such agreement.

- (3) The provisions of section 30(1)(u) of the Local Authorities Act, 1992 (Act 23 of 1992) shall, subject to the provisions of subsection (4), apply in the export processing zone in respect of services rendered by the Municipality of Walvis Bay to the Management Company pursuant to the provisions of this section and the conditions of the agreement contemplated in subsection (2), or pursuant to the conditions of the agreement contemplated in subsection (5), as the case may be.
- (4) Notwithstanding the provisions of subsection (3) the Municipality of Walvis Bay and the Management Company may, when entering into an agreement contemplated in subsection (2), provide in such agreement the charges, fees and other monies payable by the Management Company to that Municipality in respect of the services rendered as contemplated in subsection (1) or (2).
- (5) The Management Company may, notwithstanding the provisions of subsections (1) and (2), enter into an agreement with the Walvis Bay Municipality in terms of which agreement that Municipality shall render directly to -
 - (a) the Management Company;
 - (b) any export processing zone enterprise; or
 - (c) any other person,

in the export processing zone such services as may be specified in such agreement, subject to the provisions of section 30(1)(u) of the Local Authorities Act, 1992 (Act 23 of 1992) or to such other conditions as the parties to such agreement may agree upon.

Part VIII – General provisions applicable to all export processing zones

23. Delegation of powers

- (1) The Minister may, on such conditions as he or she may determine, in writing delegate to the Permanent Secretary any power conferred upon him or her by this Act, excluding any power conferred by sections 2(1), 19, 24, 25 and 26, but shall not be divested of a power so delegated by him or her.
- (2) The Permanent Secretary may, on such conditions as he or she may determine and with the approval of the Minister, in writing delegate any power conferred upon him or her by or under this Act to any officer or employee in the Ministry of Trade and Industry, but shall not be divested of a power so delegated by him or her.

24. Regulations relating to export processing zones in general

- (1) The Minister may, in respect of export processing zones make regulations in relation to the matters specified in section 94(1) of the Local Authorities Act, 1992 (Act 23 of 1992) and in general, in relation to any matter which the Minister may consider necessary or expedient to prescribe or regulate in order to attain or further the objects of this Act.
- (2) Different regulations may be made under subsection (1) in respect of different export processing zones or in respect of different areas in an export processing zone.
- (3) A regulation made under subsection (1) may in respect of any contravention thereof or any failure to comply therewith prescribe a penalty not exceeding N\$4 000 or imprisonment for a period not exceeding twelve months or both such fine and such imprisonment.
- (4) The Minister may in respect of the Walvis Bay Export Processing Zone repeal or amend the regulations referred to in subsection (5) of section 19 as if those regulations were made under the provisions of subsection (1).

25. Training of Namibian citizens

- (1) An export processing zone enterprise or an export processing zone management company, as the case may be, shall, subject to the provisions of subsections (2) and (3), be entitled to a reimbursement, out of the State Revenue Fund, of an amount equal to 75 per cent of the direct expenditure incurred by such export processing zone management company or export processing zone enterprise, as the case may be, in providing training to Namibian citizens employed by such export processing zone management company or export processing zone enterprise, as the case may be.
- (2) The reimbursement in terms of subsection (1) shall be allowed only if the contents, nature and duration of, and the costs pertaining to, the training programme concerned have, before the commencement of such training programme, been approved by the Permanent Secretary in consultation with the Permanent Secretary: Labour and Human Resources Development and the Permanent Secretary: Finance.
- (3) An application for a reimbursement in terms of subsection (1) shall be in such form, and be submitted to such person, in such manner and at such time as the Minister, in consultation with the Minister of Finance, may prescribe.
- (4) The Minister, in consultation with the Minister of Finance and the Minister of Labour and Human Resources Development, may prescribe -
 - (a) requirements in respect of and guidelines for the approval of the training programmes referred to in subsection (2);
 - (b) the procedures for obtaining such approval; and
 - (c) the monitoring of such training programmes by the Minister.

Part IX – Offshore Development Company

26. Appointment and purpose of Offshore Development Company

- (1) The Minister shall by notice in the Gazette appoint a private company with limited liability as the Offshore Development Company, in this Part referred to as “the company”, which company shall comply with the requirements of, and have the powers, duties and functions as set out in, this Part.
- (2) In this Part, unless the context otherwise indicates -

“approved activity” means any activity which is lawfully carried on by any person licensed or empowered under the provisions of this Act to carry on such activity in an export processing zone;

“offshore enterprise” means any enterprise carrying on any approved activity in an export processing zone; and

“offshore industry” means the industry comprising the offshore enterprises and approved activities in Namibia.
- (3) The purpose of the company appointed in terms of subsection (1) shall be to promote, market, coordinate and monitor all approved activities, including export processing, in Namibia and in so doing -
 - (a) to provide an umbrella service for all enterprises registered to operate in Namibia as offshore enterprises, including export processing zone enterprises, by providing the necessary liaison with the Minister;
 - (b) to implement and execute a sustained meaningful marketing and promotional programme on behalf of the whole Namibian offshore industry, including the promotion of the export processing potential of such industry;

- (c) to advise the Minister on all matters, activities and trends relating to the world offshore financial industry, including export processing zone management companies, export processing zone enterprises and other offshore enterprises in Namibia or elsewhere;
 - (d) to advise and assist the Minister in the drafting of new, or the amendment of existing, legislation enabling and governing all export processing or other offshore activities; or
 - (e) to co-ordinate and co-operate with other Ministries to ensure the adequate development of labour and infrastructure required to take full national advantage of the export processing and other offshore opportunities available to Namibia.
- (4) Without prejudice to the generality of the provisions of this Part, the Minister may by regulation confer upon the company such additional powers, duties and functions as the Minister from time to time may determine.

[The word “and” is misspelt in the Government Gazette in the phrase “duties and functions”, as reproduced above.]

27. Incorporation of Offshore Development Company

- (1) The company shall be incorporated in terms of the Companies Act, 1973 (Act 61 of 1973) as a limited liability company and shall in addition to the requirements of that Act comply with the requirements of this section.

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (2) The Government of Namibia shall be the holder of at least nine per cent of the total shareholding of the company, and shall at all times be entitled to have at least one representative on the company's board of directors.
- (3) The company shall not -
- (a) be voluntarily wound up, dissolved or merged with another company; or
 - (b) alter its Memorandum or Articles of Association,
- without prior approval of the Minister in writing.

28. Public disclosure

Each year within six months after the end of the company's financial year, the company shall publish in the Gazette and in two daily Namibian newspapers its audited balance sheet and profit and loss account together with a report of its directors on the activities of the company during such financial year.

29. Powers, duties and functions of the company

The company may, with the consent of the Minister -

- (a) enter into agreements with other companies or bodies corporate for the purpose of advancing the establishment and development of export processing zones and offshore activities in Namibia;
- (b) enter into agreements with companies who have applied to become licensed or certified as offshore enterprises in the Namibian offshore enterprise industry, including export processing zone enterprises or export processing zone management companies;
- (c) co-ordinate and promote the creation of facilities and services to establish, assist and sustain offshore and export processing enterprises;
- (d) in respect of export processing zones -
 - (i) determine fees, charges or other levies to be paid by offshore enterprises;

- (ii) by notice in the Gazette, make rules not inconsistent with this Act for the control and management of all export processing and other offshore activities and operations; and
- (iii) establish criteria for the management and operation of all export processing and other offshore operations.

30. Promoting and marketing

- (1) The main object of the company shall be to undertake such marketing and promotional activities, campaigns and representation schemes as the company may deem necessary to ensure the successful growth and expansion of Namibia's export processing zones and offshore enterprises.
- (2) To achieve the company's objects referred to in subsection (1), the company shall, with the consent of the Minister, develop methods and programmes to provide adequate funding for continuous sustainable promotional operations and shall in particular manage and maintain a publicity programme to promote Namibia in relation to export-driven industrial growth and offshore international finance.

31. Progress measurement

The company shall -

- (a) in consultation with the Minister, the Minister of Finance and the Minister of Labour and Human Resources Development, establish specific growth objectives for the offshore industry, including the creation of employment, contribution to trade balance, training of industrial personnel and matters incidental thereto;

**[The Ministry of Labour and Human Resources Development
is now the Ministry of Labour and Social Welfare.]**

- (b) measure and monitor progress toward the objectives referred to in paragraph (a) and shall from time to time inform the Minister on such progress; and
- (c) assist or advise the Minister in or on the attainment of the objectives referred to in paragraph (a).

32. Short title and commencement

This Act shall be called the Export Processing Zones Act, 1994 and shall come into operation on a date to be determined by the Minister by notice in the Gazette.