

Namibia

## Namibia Institute of Pathology Act, 1999

Legislation as at 2006-11-01.

FRBR URI: /akn/na/act/1999/15/eng@2006-11-01

PDF created on 2020-08-05 at 07:21.

There may have been updates since this file was created.

[Check for updates](#)



This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

[www.laws.africa](http://www.laws.africa)

[info@laws.africa](mailto:info@laws.africa)

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0).

Share widely and freely.

## Table of Contents

Namibia Institute of Pathology Act, 1999	3
Act 15 of 1999	3
1. Definitions	3
Part I – ESTABLISHMENT OF THE INSTITUTE	4
2. Establishment of Institute	4
3. Institute to be registered as a public limited liability company	4
4. Application of provisions of Companies Act	4
Part II – OBJECTS, FUNCTIONS AND POWERS OF THE INSTITUTE	5
5. Objects of Institute	5
6. Functions of Institute	5
7. Powers of Institute	6
Part III – DUTIES OF THE INSTITUTE	6
8. Duty to maintain records and supply information	6
9. Agreements for subsidized medical laboratory services or facilities by Institute	6
Part IV – MANAGEMENT AND CONTROL OF THE INSTITUTE	6
10. Board of Directors	6
11. Appointment of Directors	7
12. Tenure and vacation of office of director	7
13. Alternate Directors	8
14. Irregularity in appointment not to invalidate acts	8
15. Chairperson of the Board	8
16. Remuneration of Directors	8
17. Meetings of Board	8
18. Committees of the Board	9
19. Disclosure of interests	9
20. Delegation of powers, duties and functions	9
21. Indemnity of directors and employees of the Institute from personal liability	10
22. Chief Executive Officer	10
23. Staff of the Institute and transfer of service	11
Part V – FINANCIAL PROVISIONS	11
24. Reserve funds	12
25. Financial year	12
26. Accounts and auditing	12
27. Annual report	12
Part VI – LEGAL SUCCESSION	12
28. Transfer of assets and liabilities to Institute	12
29. Issue of shares to State	13
30. Exemption from transfer duties and stamp duties	13
Part VII – MISCELLANEOUS PROVISIONS	13
31. Winding-up and judicial management	13
32. Laboratories of Institute not to be subject to attachment	13
33. Rendering of service by Ministry	13
34. Regulations	14
35. Short title and commencement	14



Republic of Namibia  
**Annotated Statutes**

---

## **Namibia Institute of Pathology Act, 1999**

### **Act 15 of 1999**

Published in [Government Gazette no. 2210](#) on 19 October 1999

**Assented to on 30 September 1999**

**Commenced on 1 April 2020 by [Government Notice 91 of 2020](#)**

*[Up to date as at 14 July 2020]*

*[Amended by [Public Enterprises Governance Act, 2006 \(Act 2 of 2006\)](#) on 1 November 2006]*

ACT

**To establish the Namibia Institute of Pathology Limited; to regulate its powers, duties and functions; and to provide for incidental matters.**

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

### **1. Definitions**

In this Act, unless the context indicates otherwise -

“**assets**” includes any movable or immovable property, lease, servitude or other real right transferred to the Institute under the provisions of section 28, or lawfully acquired by the Institute by any other means;

“**Board**” means the board of directors of the Institute established in terms of section 10;

“**chief executive officer**” means the chief executive officer appointed under section 22;

“**committee**” means a committee of the Board established under section 18 and “committee member” means a member of such committee;

“**Companies Act, 1973**” means the Companies Act, 1973 (Act [No. 61 of 1973](#)) as applicable to the Institute;

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

“**Institute**” means the Namibia Institute of Pathology Limited established by section 2;

“**director**” means a director appointed under section 11, and includes an alternate director;

*[This definition is not in the correct alphabetical order. It should appear above the definition of "Institute".]*

"**Minister**" means the Minister responsible for Health and Social Services;

"**Ministry**" means the Ministry of Health and Social Services;

"**net assets**" means the total value of all assets of the Institute less the amount of all liabilities;

"**prescribe**" means prescribe by regulation;

"**Public Service**" means the Public Service as established under the Public Service Act, 1995 (Act [No. 13 of 1995](#));

"**Registrar**" means the Registrar of Companies referred to in section 7 of the Companies Act;

"**staff member**" has the meaning assigned to it in the Public Service Act, 1995 (Act [No. 13 of 1995](#));

"**this Act**" includes the regulations made thereunder.

## **Part I – ESTABLISHMENT OF THE INSTITUTE**

### **2. Establishment of Institute**

There is established a company to be known as the Namibia Institute of Pathology Limited.

### **3. Institute to be registered as a public limited liability company**

- (1) The Institute shall be incorporated under the Companies Act, 1973 as a public company with a share capital, and notwithstanding the provisions of that Act, the State shall be the sole member and shareholder of the Institute.
- (2) The Minister shall exercise the rights and powers and perform the duties and functions of member and shareholder of the Institute, on behalf of the State.
- (3) The Institute shall have a memorandum of association and articles of association drawn up in accordance with the Companies Act, 1973, and the Minister shall sign and submit them to the Registrar for registration.
- (4) The Registrar shall on receipt of the memorandum of association and articles of association referred to in subsection (3), register them in accordance with the provisions of the Companies Act, 1973, and -
  - (a) endorse thereon a certificate under his or her hand and seal, that the Institute is duly incorporated as a public company; and
  - (b) issue the Institute with a certificate to commence business.
- (5) The Institute is exempt from payment of all fees chargeable under the Companies Act, 1973 in respect of its registration or certificate to commence business.
- (6) The Minister shall lay copies of the registered memorandum of association and articles of association of the Institute before the National Assembly -
  - (a) within twenty-eight days after the date of registration, if the National Assembly is in ordinary session; or
  - (b) if the National Assembly is not in ordinary session, within fourteen days after the commencement of the next ensuing ordinary session.

### **4. Application of provisions of Companies Act**

- (1) The Companies Act, 1973 shall apply to the Institute subject to the provisions of this Act.
- (2) The provisions of sections 66, 103(1), 174, 190, 208(2), 221 and 344(d) of the Companies Act shall not

apply to the Institute.

- (3) The Minister may by notice in the Gazette exempt the Institute from the application of any other provisions of the Companies Act, 1973.
- (4) The Registrar may issue such directives and authorise such exemptions from or modifications to the regulations made under the Companies Act, 1973 as he or she may deem necessary in respect of the Institute in order to give effect to the provisions of this Act.

## **Part II – OBJECTS, FUNCTIONS AND POWERS OF THE INSTITUTE**

### **5. Objects of Institute**

The objects of the Institute shall be -

- (a) to take over the medical laboratory services from the Ministry;
- (b) to operate medical laboratories and provide laboratory services for the private and public sector on a commercial basis;
- (c) to conduct research into the pathology of diseases and perform medical laboratory services relating to the occurrence, cause, prevention, diagnosis or treatment of any illness, disease or mental defect in human beings;
- (d) to establish new medical laboratories; and
- (e) to promote staff training for medical laboratories.

### **6. Functions of Institute**

- (1) Without prejudice to the generality of section 5, the Institute shall perform the following functions in pursuit of its objects under this Act, namely -
  - (a) establish such number of medical laboratories as it may deem necessary;
  - (b) develop and manage its medical laboratory services;
  - (c) investigate, research and study matters relating to Pathology;
  - (d) take such action as the Institute may consider necessary or as the Minister may direct for the purposes of providing medical laboratory services in Namibia;
  - (e) render services and provide facilities, subject to the payment of relevant charges;
  - (f) co-operate with persons and institutions undertaking medical research in other countries through the exchange of technology and scientific knowledge by means of international meetings and other programmes;
  - (g) provide information on diseases on a regular basis;
  - (h) develop and utilise the technological expertise in its possession and in the discretion of the Institute make it available to any person or institution in Namibia or elsewhere;
  - (i) promote the training of medical laboratory staff and related personnel, and for this purpose grant study bursaries and loans;
  - (j) perform any other function as may be necessary or expedient for the achievement of its objects; and
  - (k) undertake the investigations or research, and advise the Minister on any matter, which the Minister may assign to it.
- (2) In the performance of its functions and exercise of its powers under this Act, the Institute shall give effect

to the relevant policies of the Government relating to medical laboratory services as communicated to the Institute from time to time by the Minister.

## **7. Powers of Institute**

- (1) In addition to the powers conferred by the Companies Act, 1973, and as may be qualified by this Act, the Institute shall have power to do all such acts as are necessary, expedient or incidental to the achievement of its objects and the performance of its functions under this Act, and in particular shall have power to -
  - (a) determine and levy fees or charges for services rendered or facilities provided by the Institute;
  - (b) subject to subsection (2) -
    - (i) borrow funds from within Namibia or abroad;
    - (ii) mortgage, pledge or otherwise encumber the assets of the Institute;
    - (iii) sell or dispose of any asset of the Institute; and
  - (c) hire out its assets and services not immediately required for the business of the Institute.
- (2) Notwithstanding the provisions of section 6 or subsection (1) of this section, the Institute shall not borrow funds or alienate, pledge, mortgage or otherwise encumber any asset of the Institute to a value in excess of 25 percent of its net assets without the prior written approval of the Minister, given with the concurrence of the Minister of Finance.

## **Part III – DUTIES OF THE INSTITUTE**

### **8. Duty to maintain records and supply information**

- (1) The Institute shall in respect of its operations, prepare and maintain the prescribed records.
- (2) The Institute shall furnish the Ministry with such information in its custody as is reasonably requested by the Ministry in relation to -
  - (a) the medical laboratories under its control;
  - (b) medical research and other medical functions conducted by such medical laboratories and the results of such research and functions; and
  - (c) any other matter regarding the performance of the Institute's functions under this Act.

### **9. Agreements for subsidized medical laboratory services or facilities by Institute**

- (1) The Minister may enter into a written agreement with the Institute for the supply of medical laboratory services or facilities by the Institute to any person, body, organisation or category of persons, at a cost subsidized or fully paid for by the Minister.
- (2) The moneys expended by the Minister in defraying the full cost or part thereof, of providing the services or facilities under this section shall be charged out of funds appropriated by Parliament for such purposes.

## **Part IV – MANAGEMENT AND CONTROL OF THE INSTITUTE**

### **10. Board of Directors**

- (1) The Institute shall have a Board of directors which shall be responsible for the policy, management and control of the affairs of the Institute and which shall, in the name of the Institute, exercise the powers and perform the duties and functions of the Institute subject to this Act, the Companies Act, 1973 and its memorandum of association and articles of association.
- (2) Notwithstanding the provisions of the Companies Act, 1973, the directors of the Institute shall not hold

any shares in the Institute and shall not exercise those powers reserved under the Companies Act, 1973 or the articles of association for the shareholders of a company in general meeting.

## 11. Appointment of Directors

- (1) The Board 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 Public Enterprises Governance Act, 2006.

*[Subsection (1) is substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006.]*

- (2) A person shall not be eligible for appointment as a director if he or she -
- (a) is not a Namibian citizen;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of a criminal offence and sentenced to imprisonment with or without the option of a fine;
  - (d) has a financial or other interest likely to prejudicially affect the performance of his or her duties as director of the Institute; or
  - (e) is disqualified in terms of the Companies Act, 1973 from holding the office of director.

*[Subsection (2) is amended by Act 2 of 2006. The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]*

- (3) The Minister shall in the Gazette make known the names and the period of appointment of a director appointed under subsection (1).

## 12. Tenure and vacation of office of director

- (1) *[subsection (1) deleted by Act 2 of 2006]*
- (2) The office of a director referred to in subsection (1) shall fall vacant where -
- (a) he or she resigns as a director by giving not less than one month's written notice to the Minister;
  - (b) his or her estate is sequestrated or he or she compromises with his or her creditors;
  - (c) he or she is detained as a mentally ill person under the law;
  - (d) he or she is absent from three consecutive meetings of the Board without the leave of its chairperson;
  - (e) he or she is removed from office under subsection (3) of this section; or
  - (f) he or she becomes subject to a disqualification referred to in subsection (2) of section 11.
- (3) Notwithstanding the provisions of subsection (1) or the Companies Act, 1973, the Minister may remove a director referred to in subsection (1) from office before the expiry of his or her term of office where in the Minister's opinion that director is -
- (a) incapacitated by illness;
  - (b) guilty of conduct prejudicial to the Institute's objectives; or
  - (c) for any other cause unable or unfit to efficiently discharge the functions of the office of director,
- but the Minister may only so remove a director from office after giving notice to the director and after affording him or her a reasonable opportunity to be heard.

- (4) Where a director referred to in subsection (1) dies or vacates office under this section, the Minister may, subject to the provisions of section 11, appoint another person to fill the vacancy for the unexpired term of office.

### 13. Alternate Directors

- (1) Subject to subsection (2) of section 11, the Minister may appoint for each director a person to serve as alternate director on the Board, and may terminate the appointment at any time.

*[subsection (1) amended by Act 2 of 2006]*

- (2) An alternate director -
- (a) shall serve on the Board only during the period of absence or inability of the director to whom he or she is alternate;
  - (b) shall during the period of service exercise all the powers and perform all the functions of the director to whom he or she is alternate; and
  - (c) may resign from his or her office as alternate director by written notice to the Minister.

### 14. Irregularity in appointment not to invalidate acts

The acts of a director shall not be invalidated only by reason of an irregularity in his or her appointment.

### 15. Chairperson of the Board

- (1) *[subsection (1) deleted by Act 2 of 2006]*

- (2) Where the chairperson is for any reason unable to preside over a meeting of the Board, the members present shall elect one of the directors referred to in subsection (1) to act as chairperson of the Board, for that meeting.

### 16. Remuneration of Directors

- (1) A director or alternate director who is not in the full-time employment of the Public Service, shall be paid out of the funds of the Institute such allowances or other remuneration in respect of his or her service as a director of the Board, as the Minister may determine, subject to section 22(1) of the Public Enterprises Governance Act, 2006.

*[Subsection (1) is substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006.]*

- (2) Allowances determined under subsection (1) may differ according to the different offices held by directors.

### 17. Meetings of Board

- (1) The first meeting of the Board shall be held at such time and place as the Minister may determine, and subsequent meetings of the Board shall be held at such time and place as the Board may determine, but the chairperson may at any time, and shall at the written request of at least three directors, convene a special meeting of the Board.
- (2) The majority of the members of the Board shall constitute a quorum at a meeting of the Board.
- (3) Subject to section 15(2), the chairperson of the Board shall preside at all meetings of the Board.
- (4) The decision of a majority of the members present and voting at a meeting of the Board shall constitute a decision of the Board, and in the event of an equality of votes on any matter, the person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.



- (5) A decision of the Board or an act performed under the authority of the Board shall not be invalidated only by reason of -
- (a) a vacancy on the Board; or
  - (b) the fact that a person not entitled to sit as a member of the Board was in attendance when the decision was taken or act authorized,
- if the decision was taken or act authorized by a majority of the members who were present and entitled to vote at such meeting.
- (6) Notwithstanding the provisions of subsection (4), a written resolution not passed at a meeting of the Board but signed by all the directors of the Institute at that time present in Namibia and sufficient to constitute a quorum shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted, and such resolution shall be recorded in the minutes of the next ensuing meeting of the Board.
- (7) The Board may, subject to the provisions of this Act, make rules for the convening of and procedure at its meetings or a meeting of a committee, and shall cause minutes to be kept of the proceedings at its meetings and the meetings of its committees, and the Minister may require that such minutes be submitted to him or her for inspection.

## 18. Committees of the Board

- (1) The Board may from time to time establish a committee or committees for the purposes of -
- (a) advising the Board in the exercise of its powers and performance of its duties;
  - (b) performing any function that the Board may delegate to such committee, and the Board may at any time dissolve or reconstitute a committee.
- (2) A decision or recommendation of a committee shall be subject to ratification by the Board.
- (3) A committee established under subsection (1) shall consist of two or more directors appointed by the Board from amongst its members, and may, with the approval of the Board, co-opt persons of special expertise to advise it in the performance of its functions.
- (4) The Board shall designate one of the committee members as chairperson of that committee.
- (5) If consensus cannot be reached on any matter by a committee, the matter shall be referred to the Board.
- (6) A member of the committee who is not a director or in the full time employment of the public service or the Institute shall be paid from the Institute's funds such allowances as the Board, in consultation with the Minister, may determine.

## 19. Disclosure of interests

A director or committee member who has a direct or indirect interest in any matter which is likely to conflict with the interests or objects of the Institute, shall as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest in a meeting of the Board or of a committee, as the case may be, in accordance with the procedure provided in sections 234 to 241 of the Companies Act, 1973, whereupon -

- (a) the disclosure shall be deemed to be a disclosure to the Institute; and
- (b) the director or committee member who has the interest to which the disclosure relates shall not be present during or take part in the deliberations or decision on such matter by the Board or committee, as the case may be.

## 20. Delegation of powers, duties and functions

- (1) Subject to the provisions of subsection (5) of section 22, the Board may delegate any power, duty or function conferred upon it under this Act to -
  - (a) a director of the Board;
  - (b) a committee of the Board;
  - (c) the chief executive officer or any other employee of the Institute.
- (2) The chief executive officer may delegate any power, duty or function conferred upon him or her under this Act or delegated to him or her under subsection (1), to any other employee of the Institute.
- (3) A power, duty or function delegated under subsection (1) or (2) shall be exercised or performed subject to the direction of the Board or chief executive officer, as the case may be, and the Board or chief executive officer shall not be divested of such delegated power or function, and may -
  - (a) amend or set aside anything done in exercise of such power or the performance of such function; and
  - (b) may at any time withdraw such delegation.
- (4) Nothing in this section shall prevent the Board or the chief executive officer, as the case may be, from exercising a delegated power under this section.

## 21. Indemnity of directors and employees of the Institute from personal liability

No director, committee member or employee of the Institute shall be personally liable for any damage or loss arising out of any act done by himself or herself in good faith and in the course of his or her duties to the Institute, unless such loss or damage is due to his or her wilful misconduct, dishonesty, gross negligence or failure to comply with any provision of this Act.

## 22. Chief Executive Officer

- (1) The Minister shall appoint a suitably qualified person to serve as the first chief executive officer of the Institute for the initial term of five years contemplated in subsection (2), upon such terms and conditions as the Board, after consultation with the Minister, may determine, and thereafter the appointment or reappointment of a person as chief executive officer shall be made by the Board, upon such terms and conditions as the Board, subject to section 22(3) of the Public Enterprises Governance Act, 2006, may determine.

*[Subsection (1) is substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006.]*

- (2) The appointment of the chief executive officer shall be for a term of five years, renewable on expiration, but he or she may be removed from office before the expiry of the term of office in accordance with the provisions of the contract of employment.
- (3) The chief executive officer shall -
  - (a) be in the full-time employment of the Institute and shall not engage in any other occupation or employment, whether for remuneration or not, without the prior written approval of the Board, which approval shall only be given after consultation with the Minister;
  - (b) exercise such powers and perform such functions as are conferred by this Act or assigned or delegated to him or her by the Board;
  - (c) when so requested by the Board attend any meeting of the Board; and
  - (d) be responsible for the supervision and control of the staff of the Institute.
- (4) Where the chief executive officer is temporarily unable to perform his or her duties due to illness, absence or other reason, the Board may designate any director or one of the senior employees of the Institute to

temporarily act as chief executive officer, and such person shall exercise the powers and perform the duties of the chief executive officer during that period.

- (5) The Board may under paragraph (c) of subsection (1) of section 20 delegate to the chief executive officer the power to adjust post structures, to appoint and dismiss employees of the Institute and to determine their conditions of service, but the Board may not delegate its powers under this Act to -
- (a) make rules of procedure for the meetings of the Board or its committees; or
  - (b) determine the terms and conditions of service of the chief executive officer under this section.

### **23. Staff of the Institute and transfer of service**

- (1) In the appointment of employees of the Institute, the Institute shall as of priority, offer employment to a person who at the commencement of this Act -
- (a) is employed as a staff member in the Ministry; and
  - (b) performs functions or duties pertaining to medical laboratory services, upon such terms and conditions of service which in the aggregate shall not be less favourable financially than those held by such person in the Ministry at the date of transfer of service: Provided that the post of chief executive officer and other senior managerial posts in the Institute shall be filled by open competitive candidacy.
- (2) Notwithstanding the provisions of the Public Service Act, 1995 (Act No. 13 of 1995), where a staff member referred to in subsection (1) accepts an offer of employment by the Institute, he or she shall notify the Permanent Secretary, of his or her decision in writing, and thereupon such person shall, subject to the provisions of subsection (4), be transferred to the service of the Institute to the post and upon the terms and conditions offered by the Institute.
- (3) Where the question arises under paragraph (b) of subsection (1) as to whether or not a staff member in the employment of the Ministry performs functions or duties pertaining to medical laboratory services, such question shall be determined by the Permanent Secretary.
- (4) Notwithstanding the provisions of any other law, where a staff member employed in the Ministry is transferred to the service of the Institute under this section -
- (a) the State shall pay to that staff member remuneration in lieu of any vacation leave which may have accrued during his or her employment with the Ministry and stands to his or her credit as at the date of transfer of service, but such staff member shall retain not more than sixty consecutive days' leave which shall be credited to him or her by the Institute on transfer of service: Provided that any amount payable to a staff member under this paragraph in respect of accrued vacation leave shall for the purposes of subsection (l)(o) of section 16 of the Income Tax Act, 1981 (Act No. 24 of 1981), be deemed to have become payable to him or her by reason of the termination of his or her service due to his or her employer having ceased to carry on the trade in respect of which such staff member was employed; and
  - (b) such staff member shall continue to be a member of the Government Pension Fund referred to in section 2(b) of the Pension Matters of Government Institutions Proclamation, 1989 (Proclamation AG. 56 of 1989) in accordance with an agreement between the Institute and the Board of Trustees of that Fund, and for the purpose of such membership the Institute shall be deemed to be a statutory institution which has been admitted to the membership of that Fund by the Board of Trustees of that Fund: Provided that in the event of the Institute establishing its own pension fund at any time, such staff member shall have the right, subject to the Rules of the Government Institutions Pension Fund, to transfer the actuarial interest in that Fund, to the Institute's pension fund.

## **Part V – FINANCIAL PROVISIONS**

## 24. Reserve funds

The Institute may, with the approval of the Minister, establish and operate such reserve funds as the Board may deem necessary, and may invest therein such moneys as the Board may from time to time determine.

## 25. Financial year

Subject to the provisions of section 285 of the Companies Act, 1973, the financial year of the Institute shall commence and end on such dates as the Board, in consultation with the Minister, may determine, and the Minister shall publish those dates by notice in the Gazette.

## 26. Accounts and auditing

- (1) The books of accounts, accounting records, and financial statements of the Institute shall be audited annually by an auditor or auditors duly registered under the Public Accountants and Auditors' Act, 1951 (Act No. 51 of 1951).
- (2) The auditor of the Institute shall be appointed by the Board.

## 27. Annual report

- (1) The Board shall within six months after the end of each financial year of the Institute cause to be prepared and submit to the Minister a report of the Institute's operations and activities during the relevant financial year, including -
  - (a) a copy of its audited financial statements;
  - (b) a copy of the auditor's report;
  - (c) a statement of the measures, if any, taken by the Institute in respect of the duties imposed on the Institute under section 6;
  - (d) such other matters as the Minister may prescribe.
- (2) The Minister shall lay the report referred to in subsection (1) upon the Tables of the National Assembly within twenty eight days after receipt thereof, if the National Assembly is in ordinary session, or if the National Assembly is not sitting in ordinary session, then within twenty eight days after the commencement of its first ensuing ordinary session.

## Part VI – LEGAL SUCCESSION

### 28. Transfer of assets and liabilities to Institute

- (1) The Minister shall by notice in the Gazette, determine the transfer date with effect from which the medical laboratory functions of the Ministry shall cease to be carried out by the Ministry and shall become the responsibility of the Institute.
- (2) With effect from the transfer date referred to in subsection (1) -
  - (a) all those assets determined by the Minister in writing as formerly belonging to the State and used in relation to medical laboratory services;
  - (b) all outstanding payments due from patients or services supplied by the Ministry to those patients;
  - (c) any lease, servitude or other real right held by the Ministry in respect of medical laboratory services as determined by the Minister; and
  - (d) any licence, exemption, permit, certificate or authorization held by the Ministry under any law in respect of medical laboratory services,

shall be transferred to and vest in the Institute.

- (3) The Minister may from time to time, in consultation with the Board and by notice in the Gazette, transfer to the Institute additional assets other than those referred to in paragraph (a) of subsection (2), belonging to the State and used in relation to any medical laboratory.
- (4) The Registrar of Deeds shall, at the written request of the Institute and on receipt of a certificate by the Minister to the effect that a title, lease, servitude or other real right in land has been transferred to the Institute under subsection (2) or (3) make such entries or endorsement on the register, title deed or other document in the Deeds Registry as he or she may deem necessary to effect such transfer.
- (5) The value of the assets transferred to the Institute under this section shall be determined by the Minister, in consultation with the Minister of Finance.
- (6) Any contractual rights, liabilities and obligations held by or on behalf of the Ministry in respect of medical laboratory services performed by the Ministry and in force at the effective date referred to in subsection (1), shall with effect from such date vest in the Institute.
- (7) Any legal or other proceedings instituted by or against the Ministry in respect of its function of medical laboratory services and not disposed of before the commencement of this Act shall, notwithstanding such commencement, be continued and disposed of by or against the Institute.

## **29. Issue of shares to State**

- (1) As consideration for the transfer of the net assets and rights by the State to the Institute under section 28, the Institute shall issue exclusively to the State -
  - (a) fully paid-up shares; or
  - (b) fully paid-up shares and credit a loan account in the name of the State with an amount and upon such conditions as agreed with the Minister in consultation with the Minister of Finance.
- (2) For the purposes of the Income Tax Act, 1981 (Act No. 24 of 1981) or any other law, the Institute shall be deemed to have actually incurred expenses in the acquisition of assets and rights under section 28 and such expenses including the cost of those assets shall be deemed to be equivalent to the value of the assets determined by the Minister under subsection (5) of that section.

## **30. Exemption from transfer duties and stamp duties**

- (1) Notwithstanding the provisions of any other law to the contrary, the Institute is exempt from the payment of transfer duties and stamp duties payable in respect of the transfer of assets to the Institute under section 28.
- (2) No fee or amount shall be payable by the Institute in terms of section 63 or 75 of the Companies Act, 1973 in respect of the creation of, or any increase in its share capital.

## **Part VII – MISCELLANEOUS PROVISIONS**

### **31. Winding-up and judicial management**

The Institute shall not be wound up or placed under judicial management except under the authority of an Act of Parliament.

### **32. Laboratories of Institute not to be subject to attachment**

No medical laboratory or portion thereof belonging to the Institute shall be liable to attachment in respect of any judgment of any court granted against the Institute.

### **33. Rendering of service by Ministry**

Where any service is required to be rendered by the Ministry to the Institute, the Minister may direct that such service be rendered to the Institute by the Ministry in such manner and to such extent as the Minister may determine, and the Minister may fix a fair and reasonable charge to be paid by the Institute for such service.

### **34. Regulations**

The Minister may make regulations that are not in conflict with this Act regarding any matter necessary for the purposes of the realization of the objects of the Institute.

### **35. Short title and commencement**

This Act shall be called the Namibia Institute of Pathology Act, 1999, and shall come into operation on a date to be determined by the Minister by notice in the Gazette.