

DECENTRALISATION ENABLING ACT, 2000 (ACT NO. 33 OF 2000)

(Date of commencement: 5 March 2001)

To provide for and regulate the decentralisation to regional councils and local authority councils of functions vesting in Line Ministries; and to provide for incidental matters.

(Signed by the President on 21 December 2000)

ARRANGEMENT OF SECTIONS

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

Definitions

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

"decentralisation" means the delegation or devolution, as the case may be, under section 2 of any function from a Line Ministry to a regional council or to a local authority council, as the case may be, and "decentralise" has a corresponding meaning;

"delegation" means the transfer by the Minister, by means of decentralisation under section 2, of a function from a Line Ministry to a regional council or to a local authority council, as the case may be, in order to empower and enable the regional council or local authority council to which the function has been decentralised, to perform the function as an agent on behalf and in the name of the Line Ministry, and "delegate" has a corresponding meaning;

"devolution" means the transfer by the Minister, by means of decentralisation under section 2, of a function from a Line Ministry to a regional council or to a local authority council, as the case may be, in order to empower and enable the regional council or local authority council to which the function has been decentralised, to perform the function for its own profit and loss, and "devolve" has a corresponding meaning;

"function" means a function conferred or imposed on a Line Ministry by any law and which has been or is to be decentralised under this Act;

"Line Ministry" means a Ministry in respect of which a function has been or is to be decentralised;

"Local Authorities Act" means the Local Authorities Act, 1992 (Act No. 23 of 1992);

"local authority council" means a local authority council as defined in section 1 of the Local Authorities Act;

"Minister" means the Minister responsible for regional and local government matters;

"Ministry" means a Ministry as defined in section 1 of the Public Service Act;

"Public Service" means the Public Service referred to in section 2 of the Public Service Act;

"Public Service Act" means the Public Service Act, 1995 (Act No. 13 of 1995);

"regional council" means a regional council as defined in section 1 of the Regional Councils Act;

"Regional Councils Act" means the Regional Councils Act, 1992 (Act No. 22 of 1992);

"regional officer" means a regional officer as defined in section 1 of the Regional Councils Act;

"staff member" means -

- (a) in the case of a staff member of a Line Ministry, a staff member as defined in section 1 of the Public Service Act;
- (b) in the case of a staff member of a regional council, a staff member as defined in section 1 of the Regional Councils Act; and
- (c) in the case of a staff member of a local authority council, a staff member as defined in section 1 of the Local Authorities Act;

"State Finance Act" means the State Finance Act, 1991 (Act No. 31 of 1991);

"State Revenue Fund" means the State Revenue Fund as defined in section 1 of the State Finance Act; and

"Trust Fund" means the Trust Fund for Regional Development and Equity Provisions established by section 2 of the Trust Fund for Regional Development and Equity Provisions Act, 2000.

Decentralisation of functions

2. (1) The Minister may decentralise, by notice in the *Gazette* and subject to the other provisions of this section, to any regional council or local authority council, as the case may be, any function determined by him or her.

(2) Notwithstanding anything in this Act contained, the Minister shall -

(a) consult, prior to the decentralisation of any function under subsection (1), with the Minister responsible for the Line Ministry concerned; and

(b) exercise his or her powers under subsection (1) only in consultation with Cabinet.

(3) A notice under subsection (1) shall -

(a) define the function decentralised under that subsection;

(b) identify -

(i) the Line Ministry from which; and

(ii) the regional council or local authority council, as the case may be, to which,

the function defined in the notice is decentralised under that subsection;

(c) describe the portion of the area of the regional council or local authority council, as the case may be, in respect of which the function defined in the notice is decentralised, if the decentralisation of the function shall apply only in respect of a certain portion of the area, and not in respect of the entire area, of the regional council or local authority council concerned, as the case may be;

(d) state whether the decentralisation of the function defined in the notice is a delegation or a devolution, as the case may be, of the function;

(e) specify the terms and conditions subject where to the function defined in the notice is decentralised; and

(f) determine the date on which the decentralisation of the function defined in the notice shall become of force and effect.

Effect of delegation of function

3. (1) From the date on which the delegation of a function under section 2 becomes of force and effect -

- (a) the function shall be performed by the regional council and local authority council concerned, as the case may be, for and on behalf of the Line Ministry concerned;
 - (b) the Line Ministry concerned shall continue to budget and provide, notwithstanding the decentralisation of the function, funds relating to and for purposes of the function;
 - (c) income received in respect of the function shall be deposited, notwithstanding anything contained in the State Finance Act, into a separate account of the regional council or local authority council concerned as contemplated in section 28(1)(l) of the Regional Councils Act or section 30(1)(y) of the Local Authorities Act, as the case may be, which account shall be opened and operated specifically for the purposes and in respect of the function, or, if the regional council or local authority council so requests, the income shall be paid into the Trust Fund on behalf of the regional council or local authority council concerned, as the case may be;
 - (d) any expenditure relating to the function shall be paid from an account referred to in paragraph (c); and
 - (e) any damage or loss caused by the regional council or local authority council concerned, as the case may be, due to the wrongful exercise of a function shall be for the account of the Line Ministry concerned.
- (2) The Minister responsible for the Line Ministry -
- (a) shall -
 - (i) identify staff members of the Line Ministry who relate to or are connected with the function referred to in subsection (1);
 - (ii) submit to the Office of the Prime Minister in writing the names of and the particulars relating to, the staff members identified in terms of subparagraph (i), for the purpose of the secondment of the staff members in accordance with section 23 of the Public Service Act, to the regional council or local authority council concerned, as the case may be; and
 - (iii) provide guidelines and set standards in respect of, and train and instruct, the staff members seconded in accordance with subparagraph (ii), or supervise, inspect, monitor and evaluate their performance after secondment; and
 - (b) may identify a staff member seconded in accordance with paragraph (a), and in writing submit, *mutatis mutandis* in accordance with that paragraph, his or her name to the Office of the Prime Minister for the purpose of the termination of the secondment of the staff member,

after consultation with the Minister.

Withdrawal of delegation of functions

4. (1) The Minister may withdraw, subject to subsections (2) and (3), the delegation of any function which has been delegated under section 2 -

- (a) if requested thereto by the regional council or local authority council concerned; as the case may be; or
- (b) if, in the reasonable opinion of the Minister, the regional council or local authority council concerned, as the case may be, is not or is no longer competent or able to perform the function.

(2) The Minister shall -

- (a) consult, prior to the withdrawal of the delegation of any function under subsection (1), with the regional council or local authority council concerned, as the case may be, and with the Minister responsible for the Line Ministry concerned; and
- (b) exercise any power under subsection (1)(b) only in consultation with Cabinet.

(3) The withdrawal of the delegation of a function under subsection (1) shall be made known by the Minister by notice in the *Gazette*.

(4) If the Minister withdraws, under subsection (1), the delegation of a function -

- (a) the secondment of any staff member under section 3(2) shall terminate on; and
- (b) any accrued funds held by a regional council or local authority council concerned as contemplated in section 3(1)(c) shall be repaid to the Line Ministry concerned within a period of 30 days after,

the date of publication of the notice in terms of subsection (3).

Effect of devolution of functions

5. (1) As soon as practicable after the date on which the devolution of a function under section 2 became of force and effect, the Minister shall determine, in writing and in consultation with the Minister responsible for the Line Ministry concerned, the vesting of ownership in, or the use by, as the case may be, the regional council or local authority council concerned, as the case may be, of -

- (a) the immovable property, including erven and buildings, together with all the improvements on such immovable property, including purpose-made furniture; and
- (b) the movable property, including furniture and equipment,

of which property, immediately prior to that date, the Line Ministry was the owner or had the use of, as the case may be, and which property was used in relation to or in connection with the function, and the Minister shall issue a certificate containing particulars of the determination, including a description of the property concerned, the liabilities pertaining thereto and the conditions subject whereunto the ownership of such property shall pass to, or the property may be used by, the regional council or local authority council concerned, as the case may be.

(2) From the date on which the devolution of a function under section 2 became of force and effect -

- (a) income received in respect of the function concerned shall be deposited, notwithstanding anything contained in the State Finance Act, into a separate account of the regional council or local authority council concerned as contemplated in section 28(1)(l) of the Regional Councils Act or section 30(1)(y) of the Local Authorities Act, as the case may be, which account shall be opened and operated specifically for the purpose and in respect of the function, or, in the case of a regional council or local authority council which so requests, the income shall be paid into the Trust Fund on behalf of the regional council or local authority council concerned;
- (b) any expenditure relating to the function shall be paid from an account referred to in paragraph (a);
- (c) any funds which relate to or are connected with the function concerned and which stand to the credit of a Line Ministry in the State Revenue Fund shall be paid, as agreed between the Permanent Secretary: Finance, the Permanent Secretary of the Line Ministry concerned and the regional officer of the regional council or the chief executive officer of the local authority council concerned, as the case may be, into the account referred to in paragraph (a), of the regional council or local authority council concerned, as the case may be;
- (d) if a staff member of the Line Ministry concerned is identified by the Minister responsible for that Line Ministry as a staff member who relates to or is connected with the function, and is appointed in terms of the Regional Councils Act or the Local Authorities Act, as the case may be, in consequence of the devolution of a function under subsection (2), as a staff member of the regional council or of the local authority council concerned, as the case may be -

- (i) all vacation and sick leave of a staff member which on the date immediately preceding the date of appointment concerned stands with the Line Ministry to the credit of that staff member, including all monetary benefits attached thereto, shall be transferred on behalf of the staff member to the regional council or the local authority council concerned, as the case may be; and
- (ii) a staff member referred to in subparagraph (i) shall continue to be a member of the Government Institutions Pension Fund referred to in section 2(b) of the Pension Matters of Government Institutions Proclamation, 1989 (Proclamation AG. 56 of 1989); and
- (e) any damage or loss caused by a regional council or local authority council, as the case may be, due to the wrongful exercise of a function shall be for the account of the regional council or local authority council concerned, as the case may be.

(3) Notwithstanding subsection (1), the Minister responsible for Works, the Minister responsible for the Line Ministry concerned and the regional officer of the regional council concerned or the chief executive officer of the local authority council concerned, as the case may be, may agree that the ownership of any immovable or movable property, or rights, liabilities or obligations other than those referred to in subsection (1), shall pass to, or may be used by, as the case may be, a regional council or a local authority council concerned, as the case may be, and the Minister responsible for Works shall issue a certificate containing particulars of the agreement, including a description of the property concerned, the liabilities pertaining thereto and the conditions subject where to the ownership of such property shall pass to, or the property may be used by, the regional council or local authority council concerned, as the case may be.

(4) The Registrar of Deeds shall without payment of transfer duty, stamp duty or any other duty, fee or charge and on production to him or her of the title deed pertaining to any immovable property referred to in subsection (1)(a) or (3), as the case may be, and the certificate issued in terms of the corresponding subsection, endorse such title deed to the effect that the immovable property described in the title deed and in the certificate concerned is vested in the regional council or local authority council concerned, and shall make the necessary entries or endorsements in or on any relevant register or other document in his or her office.

- (5) (a) The management committee of a regional council or local authority council concerned, as the case may be, shall in the preparation and compilation of a statement or supplementary statement of its estimated income and expenditure in terms of section 36(1) of the Regional Councils Act or section 83(1) of the Local Authorities Act, as the case may be, in consultation with the Permanent Secretaries of the Line Ministries concerned, provide for income and expenditure in connection with all the functions which have been devolved to it, including income budgeted by a Line Ministry in connection with any function which has been devolved.

- (b) A Line Ministry may provide, in consultation with the regional councils and local authority councils concerned, in its budget for the following financial year for funds to be paid to regional councils or local authority councils in respect of any function which has been devolved.
- (c) The Permanent Secretary: Regional and Local Government and Housing, or any staff member authorised thereto by that Permanent Secretary, shall consult, for the purposes of paragraphs (a) and (b), with regional councils, local authority councils and Line Ministries.
- (d) Funds appropriated by a Line Ministry under paragraph (b) shall be paid into an account of the regional council or local authority council concerned, as the case may be, as contemplated in subsection (2)(a), or, in the case of a regional council or local authority council which so requests, in the Trust Fund on behalf of the regional council or local authority council concerned.

(6) For the purpose of promoting compliance with this Act by the regional councils and local authority councils concerned, as the case may be, the Permanent Secretary of a Line Ministry or any staff member authorised thereto by that Permanent Secretary shall -

- (a) furnish, when so requested by a regional council or a local authority council, as the case may be, that regional council or local authority council, as the case may be, with advice or recommendation relating to the performance; and
- (b) supervise the performance by a regional councils or a local authority council, as the case may be,

of functions devolved to the regional council or the local authority council under section 2.

(7) For the purpose of subsection (4) and of section 6(6), “Registrar of Deeds” means the person appointed as such in terms of section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or any other person in charge of any other office where a register or record of the ownership of or the entitlement of any immovable property, or any other right to or pertaining to such property, is kept.

Withdrawal of devolution of functions

6. (1) The Minister may withdraw, subject to subsections (2) and (3), the devolution of any function which has been devolved under section 2 -

- (a) if requested thereto by the regional council or local authority council concerned; or
- (b) if, in the reasonable opinion of the Minister, the regional council or local authority council concerned -

- (i) on account of a report by the Auditor-General after conducting an ordinary audit or conducting an audit at the request of the Minister -
 - (aa) is unable to meet its financial commitments with regard to the function; or
 - (bb) is not exercising proper control over the assets and liabilities of the regional council or local authority council concerned with regard to the function; or
 - (ii) is not, or is no longer competent or able to perform the function concerned.
- (2) The Minister shall -
- (a) prior to the withdrawal of the devolution of any function under subsection (1), consult with the regional council or local authority council concerned, and with the Minister responsible for the Line Ministry concerned; and
 - (b) exercise any power under subsection (1)(b) only in consultation with Cabinet.
- (3) The withdrawal of the devolution of a function under subsection (1) shall be made known by the Minister by notice in the *Gazette*.
- (4) If the Minister has withdrawn the devolution of any function under subsection (1) -
- (a) the immovable or movable property and all rights or obligations referred to in section 5(1) shall again vest in or be used by, as the case may be, the Line Ministry concerned;
 - (b) any accrued funds held by the regional council or the local authority council concerned under section 5(2)(a) and (c) shall be repaid to the Line Ministry concerned;
 - (c) any expenditure relating to the function concerned shall be paid by the Line Ministry concerned;
 - (d) if a staff member of a regional council or a local authority council, as the case may be, is identified by the Minister responsible for the Line Ministry concerned under subsection (5)(a) as a staff member who relates to or are connected with the function, and the staff member is appointed, in consequence of the withdrawal of the devolution of a function under subsection (1), as a staff member in the Public Service -

- (i) all vacation and sick leave of, and which on the date immediately preceding the date of appointment concerned stands to the credit of, that staff member with the regional council or local authority council concerned, as the case may be, including all monetary benefits attached thereto, shall be transferred on behalf of that staff member to the Public Service; and
 - (ii) a staff member referred to in subparagraph (i) shall continue to be a member of the Government Institutions Pension Fund referred to in section 2(b) of the Pension Matters of Government Institutions Proclamation, 1989 (Proclamation AG. 56 of 1989).
- (5) The Minister responsible for the Line Ministry concerned shall identify -
- (a) the staff members of the regional council or local authority council concerned who relate to or are connected with the function of which the devolution has been withdrawn under subsection (1), and who have to be re-appointed as staff members in the Public Service; and
 - (b) the immovable or movable property, rights or obligations referred to in subsection (4)(a),

and issue separate certificates containing particulars of such staff members and of such immovable or movable property, rights or obligations, respectively.

(6) The Registrar of Deeds shall without payment of transfer duty, stamp duty or any other duty, fee or charge and on production to him or her of the title deeds relating to the immovable property referred to in subsection (4)(a) and the relevant certificate issued in terms of subsection (5), endorse such title deeds to the effect that the immovable property described therein vests in the Line Ministry concerned, and shall make the necessary entries or endorsements in or on any relevant register or other document in his or her office.

Use of budgeted funds paid to regional councils and local authority councils

7. Any funds budgeted by a Line Ministry under section 5(5) and which is paid to regional councils or local authority councils, shall be used only for the purposes for which the funds concerned were budgeted, and not for any other purpose.

General provisions

8. (1) Any provision in this Act relating to the application of moneys accruing to the State in any manner other than the deposit thereof in the State Revenue Fund is enacted upon the authority of Article 125(3) of the Namibian Constitution and shall apply notwithstanding any provision of the State Finance Act.

(2) Nothing in this Act contained shall be construed as derogating from any other power, duty or function which a regional council or local authority council has in terms of any other law to generate income.

(3) Notwithstanding the fact that this Act is aimed at the decentralisation of functions to regional councils and local authority councils, every regional council and local authority council shall act in the interest of the unitary state as a whole when performing any function decentralised under this Act.

Declaration by President

9. (1) The President may declare, if a function conferred or imposed by or under any law on an agency or office as defined in section 1 of the Public Service Act has to be decentralised, by proclamation in the *Gazette* that agency or office, as the case may be, to be a Line Ministry for the purposes of this Act.

(2) The declaration by the President under subsection (1) of an agency or office as a Line Ministry may be made subject to such conditions, if any, as he or she may determine and specify in the proclamation published under that subsection.

Short title and commencement

10. (1) This Act shall be called the Decentralisation Enabling Act, 2000, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.