

## STATE FINANCE ACT 31 OF 1991

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### ACT

To provide for the regulation of the receipt, custody and banking of, the accounting for, and the control and disposal of State moneys, stamps, securities, forms having a face or potential value, equipment, stores and other movable goods owned or leased by the State; the defrayal of expenditure on services of the State and the making of other payments from the banking accounts maintained in respect of State moneys; the recovery of losses or damages caused to the State; the powers and duties of the Treasury; the powers and duties of the Auditor-General; the raising and repayment of loans by the State; the determination of interest rates in respect of certain debts due to the State; the furnishing of guarantees, indemnities and securities by the Government in respect of the financial commitments of certain statutory institutions, banks, companies or juristic persons; and to provide for matters connected therewith.

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

#### 1 Definitions

(1) In this Act, unless the context indicates otherwise-

**"accounting officer"** means a person designated as accounting officer by or under section 8;

**"agency"** means an agency as defined in section 1 (1) of Public Service Act, 1994;

[“agency” inserted by s. 39 of Act 13 of 1995.]

**"appropriation Act"** means an appropriation Act or additional appropriation Act passed pursuant to the provisions of Article 126 (2) of the Namibian Constitution;

**"Auditor-General"** means the person appointed in that capacity under Article 127 (1) of the Namibian Constitution;

**"Bank"** means the Bank of Namibia established by section 2 of the Bank of Namibia Act, 1990 (Act 8 of 1990);

[“chief executive officer” deleted by s. 39 of Act 13 of 1995.]

**"Column 2 amount"** means an amount mentioned in "Column 2" of a schedule to an appropriation Act;

**"commercial bank"** means a bank as defined in section 1 of the Banks Act, 1965 (Act 23 of 1965);

**"estimate of expenditure"** means an estimate of expenditure or an additional estimate of expenditure presented to the National Assembly in accordance with the provisions of Article 126 (1) of the Namibian Constitution;

**"financial year"** means the period from 1 April in any year to 31 March in the next ensuing year or, in the application of the provisions of Part III in relation to a statutory institution, the financial year of the statutory institution concerned in terms of the law by or under which it has been established;

**"internal registered stock"** means public stock issued in Namibia under paragraph (b) of subsection (2) of section 29 and entered in the registers referred to in section 30 (1) (a);

**"main division"**, in relation to a vote, means a main division shown in an estimate of expenditure;

**"Minister"** means the Minister of Finance;

**"ministry"** means a ministry as defined in section 1 (1) of the Public Service Act, 1994;

[“ministry” substituted by s. 39 of Act 13 of 1995.]

**"municipality"** means a municipality established or constituted or deemed to have been established

**"office"** means an office as defined in section 1 (1) of the Public Service Act, 1995;

[“office” inserted by s. 39 of Act 13 of 1995.]

constituted under the Municipal Ordinance, 1963 (Ordinance 13 of 1963);

**"Permanent Secretary"** means a Permanent Secretary as defined in section 1 (1) of the Public Service Act, 1994;

[“Permanent Secretary” inserted by s. 39 of Act 13 of 1995.]

**"public office"** .....

[“public office” deleted by s. 39 of Act 13 of 1995.]

**"revenue"** means all moneys received by way of-

- (a) taxes, levies, duties or fees not accruing by or under any law to the funds of any statutory institution;
- (b) tariffs, rates, scales or charges levied on services rendered by an office, ministry or agency;
- (c) fines imposed in respect of offences, whether under the common law or the provisions of any law, except such fines as in terms of any law accrued to the funds of any statutory institution, or the forfeiture to the State of any bail moneys or any other moneys seized, or the realization of goods seized, in connection with any such offence;
- (d) loans raised in terms of the provisions of this Act;

- (e) interest on moneys invested by the Permanent Secretary: Finance in terms of section 10;

[Para. (e) substituted by s. 39 of Act 13 of 1995.]

- (f) dividends on shares held by the State;
- (g) the alienation of any asset of the State;
- (h) gifts accepted in terms of section 19;
- (i) grants-in-aid received by the State,

and all casual and other receipts of the State from whatever source;

**"security"** means any bill of exchange, promissory note or debenture, and, in the application of sections 24 (1) (i), 29, 33 and 34 includes any treasury bill or any stock or bond certificate or other document issued under subsection (2) of section 29 and signed in terms of subsection (4) of that section;

**"State Account"** means the account maintained in terms of section 2;

**"State moneys"** means-

- (a) all revenue;
- (b) all other moneys whatever received or held by or on behalf of an accounting officer in relation to the administration of the affairs of the State;

**"State Revenue Fund"** means the State Revenue Fund referred to in Article 125 (1) of the Namibian Constitution;

**"statutory institution"** means any board, body, fund, account, company, corporation, organisation or juristic person established by or under any law, controlling or being entitled to control by virtue of any such law, funds accruing to it as a whole or in part from moneys appropriated by Parliament for such purpose: Provided that a municipality and a village management board shall, for the purposes of Part III of this Act, be deemed to be statutory institutions;

**"Treasury"** means the financial authority in the Public Service which is vested in the Ministry of Finance and whose powers in relation to any matter are exercised by the Minister or an officer in that Ministry who, by virtue of a division of work in that Ministry, deals with that matter;

**"unauthorised expenditure"** means-

- (a) any expenditure or payment incurred or made contrary to the provisions of section 6 or 17;
- (b) any expenditure or payment for which no provision has been made by or under any law;
- (c) any expenditure or payment incurred or made without the authorisation or approval required by this Act;
- (d) any expenditure or payment incurred or made contrary to the provisions of any law;

- (e) any expenditure or payment in respect of which no voucher or other proof of payment required by the Auditor-General has been produced or, in the case of any expenditure or payment in respect of which any such voucher or other proof is defective or has been lost or destroyed, in respect of which the Treasury, or in the case of a statutory institution, the executive authority thereof, has not in terms of section 25(1 ) (c) (iv) authorised the Auditor-General to dispense with the production of the voucher or other proof concerned;

**"village management board"** means a village management board constituted or deemed to have been constituted under the Village Management Boards Ordinance, 1963 (Ordinance 14 of 1963);

**"vote"** means a vote shown in a schedule to an appropriation Act and in an estimate of expenditure.

(2) Any reference in any law or document-

- (a) to the Consolidated Revenue Fund or Central Revenue Fund or any account of such Fund, shall be construed as a reference to the State Revenue Fund;
- (b) to the Controller and Auditor-General, shall be construed as a reference to the Auditor-General;
- (c) to local stock or local registered stock, shall be construed as a reference to internal registered stock 2

## **PART I**

### **BANKING ACCOUNTS, ACCOUNTING SYSTEM, DEFRAYAL OF EXPENDITURE AND RECOVERY OF LOSSES OR DAMAGES**

#### **2 Accounts at Banks or commercial banks**

(1) There shall be maintained at the Bank an account to be known as the State Account-

- (a) into which shall, subject to the provisions of this Act or any other law, be deposited all State moneys; and
- (b) from which shall, subject to the provisions of this Act or any other law, be defrayed all expenditure on services of the State or shall be made all payments in relation to State moneys.

(2) Notwithstanding the provisions of subsection (1), the accounting officer for the vote of the Ministry responsible for communication may, for the purposes of defraying expenditure or of making payments in relation to the affairs of that Ministry, utilize or retain on hand for utilization, on such conditions as may be determined by the Treasury, any State moneys received in that Ministry in relation to communication without depositing it or causing it to be deposited in the State Account.

(3) Unless the Treasury determines otherwise, the Bank shall on every working day, in such form as the Treasury may determine, render a return

to the Permanent Secretary: Finance in respect of all moneys deposited in and paid from the State Account.

- (4) (a) An accounting officer may, with the authorisation of the Treasury, open an account at the Bank or any commercial bank into which all State moneys received by the accounting officer and as determined by the Treasury, shall be deposited, and from which all expenditure shall be defrayed and all amendments shall be made as the Treasury may determine.
- (b) The provisions of subsection (3) shall *mutatis mutandis* apply in relation to an account opened under paragraph (a): Provided that the return referred to in that subsection shall be rendered to a person determined by the Treasury.

### **3 Establishment of trading and related accounts**

- (1) The Treasury may authorize an accounting officer to establish trading and related accounts in respect of services and goods supplied by such accounting officer's office, ministry or agency to any other office, ministry or agency or any other institution.
- (2) Expenditure in respect of the supply of services and goods referred to in subsection (1), as determined by the Treasury, shall be financed from moneys in the accounts-
  - (a) which have been appropriated by Parliament;
  - (b) which, notwithstanding anything to the contrary in this Act or any other law contained, have been received in payment of services and goods referred to in subsection (1);
  - (c) which have been obtained from the sale of redundant and unserviceable supplies related to the supply of the services and goods in question;
  - (d) which have been obtained with the concurrence of the Treasury from any other source.
- (3) The relevant account of the State Revenue Fund shall be credited with any profit at the end of a financial year and any loss shall be made good from appropriated moneys.

### **4 System of account-books and registers**

The Permanent Secretary: Finance shall keep proper accounts of all transactions in relation to State moneys by means of a system of account-books, accounts and registers approved by the Treasury after consultation with the Auditor-General.

### **5 Form of estimates of expenditure and revenue**

The Minister shall determine the form in which estimates of expenditure and revenue shall be presented to the National Assembly.

## **6 Expenditure during a financial year**

Subject to the provisions of sections 9 and 16 (1) (a) no expenditure shall be incurred during a financial year on services of the State which-

- (a) in the case of expenditure in respect of which an amount of money has been appropriated by an appropriation Act-
  - (i) results in the total amount mentioned in an estimate of expenditure in respect of a vote being exceeded;
  - (ii) results in the total amount mentioned in a main division of a vote being exceeded;
  - (iii) results in the total amount mentioned in a subdivision of a main division being exceeded;
  - (iv) results in a Column 2 amount of any vote being exceeded;
- (b) in the case of expenditure in respect of which amounts of money have been appropriated by or under any other law, results in the amounts determined by or under such law being exceeded.

## **7 Duration of appropriation Act**

An appropriation Act shall not be construed as authorising the withdrawal from the State Revenue Fund of amounts of money appropriated thereby during a financial year other than the financial year to which it expressly relates.

## **8 Accounting officers and other responsible officers**

(1) Unless the Treasury determines otherwise, the Permanent Secretary of an office, of a ministry and of an agency shall, subject to the provisions of subsection (4), be the accounting officer for the vote or votes of that office, ministry or agency, and he or she shall-

- (a) be charged with the receipt, custody, banking and payment of, and accounting for, State moneys received in such office, ministry or agency; and
- (b) in relation to that vote or votes, exercise or perform the powers and duties conferred or imposed upon an accounting officer by or under this Act or any other law.

[Sub-s. (1) substituted by s. 39 of Act 13 of 1995.]

(2) Whenever an accounting officer is absent or is for any other reason unable to act, the person acting in his or her place shall exercise or perform the powers and duties conferred or imposed upon an accounting officer by or under this Act or any other law as if he or she were the accounting officer.

(3) The powers and duties conferred or imposed upon an accounting officer by or under this Act or any other law may be exercised or performed by the accounting officer personally or by an officer in his or her office, ministry or agency engaged in carrying out the said provisions under the control, direction or supervision of the accounting officer concerned.

- (4) (a) Notwithstanding the provisions of subsection (1), the Treasury may, after consultation with the accounting officer concerned, charge any person who is not an accounting officer with the responsibility of accounting for State moneys received and paid out by such person in so far as such receipt or payment relates to a particular portion of a vote.
- (b) The Treasury may assign to a person charged under paragraph (a) with the responsibility for a portion of a vote any or all of the powers and duties which the accounting officer may exercise or is required to perform in relation to such portion of a vote.
- (c) A power or duty assigned to a person under paragraph (b), shall be exercised or performed by such person in relation to the said portion of a vote to the exclusion of the accounting officer for the vote as if such person were the accounting officer.
- (d) The provisions of subsection (2) shall *mutatis mutandis* apply in relation to a person charged under paragraph (a) with the responsibility for a portion of a vote.

## **9 Authorisation by Minister for withdrawal of moneys from State Revenue Fund**

(1) Notwithstanding the provisions of sections 6 and 7, the Minister may-

- (a) until an amount of money has been appropriated by an appropriation Act in respect of a financial year, but during a period not exceeding four months after the commencement of such financial year, authorise the withdrawal of moneys from the State Revenue Fund without an appropriation by law, in order to defray expenditure on services in respect of which money was appropriated in the preceding financial year: Provided that-
  - (i) the total amount of money which may be so authorised shall not at any time exceed an amount of money equal to thirty-three percent of the total amount of money appropriated by an appropriation Act for the preceding financial year;
  - (ii) any expenditure on services defrayed under such authorisation before the commencement of the appropriation Act in respect of the financial year concerned, shall be deemed to be expenditure defrayed under that appropriation Act;
- (b) authorise the withdrawal of moneys from the State Revenue Fund in order-
  - (i) to defray expenditure on services in connection with any anticipated excess of an amount mentioned in an estimate of expenditure in respect of a vote;
  - (ii) to defray expenditure on services of a special nature which are not provided for in an appropriation Act,

if the Minister is satisfied that the expenditure concerned cannot without serious detriment to the public interest be postponed until provision can be made therefore by law;

- (c) authorise the establishment of a new main division and, if necessary, subdivisions thereof in respect of a vote for the expenditure referred to in paragraph (b) (ii);
  - (d) authorise the withdrawal of moneys from the State Revenue Fund in order to defray expenditure on services in connection with an anticipated excess of a Column 2 amount.
- (2) The Minister shall not authorise under subsection (1) (b) or (d) the withdrawal of an amount of money which at any time exceeds an amount of money equal to three percent of the total amount appropriated by the current appropriation Act or of the total amount of money in respect of which the withdrawal has been authorised under subsection (1) (a), as the case may be, and particulars of the amounts of money withdrawn thereunder, shall be submitted by the Minister to the National Assembly for appropriation of the amounts concerned, not later than the end of the financial year in which such withdrawal has been authorised.
- (3) Any main division established under paragraph (c) of subsection (1), shall for the purposes of this Act be deemed to have been shown in the estimate of expenditure concerned.

## **10 Withdrawal of moneys from State Account or State Revenue Fund by Permanent Secretary for certain purposes**

- (1) The Permanent Secretary: Finance may-
- (a) notwithstanding anything to the contrary contained in any other law, withdraw amounts of money from the State Account, which are not required for immediate use, for investment at any financial institution in or outside Namibia approved by the Minister;
  - (b) withdraw amounts of money from the State Revenue Fund-
    - (i) for the payment of legitimate claims arising from a guarantee, an indemnity or a security furnished by the Minister under section 36 of this Act or under any other law;
    - (ii) for the refund of moneys inadvertently or incorrectly deposited into the State Revenue Fund;
    - (iii) for the payment of any interest payable on moneys borrowed and which are to be repaid from the State Revenue Fund, and of any losses suffered in relation to any loan raised in terms of this Act outside Namibia as a result of any change in the value of the currency of Namibia in relation to the currency of the country concerned and of any other expenditure incurred in connection with the raising of such loan;
    - (iv) for the repayment of any moneys borrowed in terms of this Act and for the repurchase or repayment of any securities issued under this Act.



- (2) The amounts of money withdrawn in accordance with subsection (1) as a charge to the State Revenue Fund, shall be deemed to have been appropriated by law for the purposes concerned.
- (3) The Minister shall as soon as practicable lay upon the Table of the National Assembly a statement showing particulars of payments made under subsection (1) (b) (i).

## **11 Recovery of loss or damages**

### **(1) Whenever-**

- (a) any person who is or was employed in a office, ministry or agency caused any loss or damage to the State in that he or she-
  - (i) incurred an unauthorised expenditure or was responsible for incurring it;
  - (ii) failed to collect State moneys for the collection of which he or she is or was responsible;
  - (iii) is or was responsible for a deficiency in, or a destruction of or damage to, State moneys, stamps, securities, forms having a face or potential value, equipment, stores or other movable goods owned or leased by the State;
  - (iv) due to an omission to carry out his or her duties properly, is or was responsible for fruitless expenditure of State moneys or for a claim against the State;
- (b) any person-
  - (i) in any manner caused any loss or damage to the State;
  - (ii) has as a result of an unauthorised expenditure been unjustly enriched,

the accounting officer concerned or, in a case where an accounting officer has caused such loss or damage or has been so unjustly enriched, the Treasury, shall determine the amount of such loss, damage or enrichment and, subject to the provisions of subsection (3), by notice in writing order such person to pay the amount so determined within a period of thirty days as from the date of such notice.

- (2) Unless the Auditor-General directs otherwise, the accounting officer concerned or the Treasury, as the case may be, shall notify the Auditor-General forthwith of all the facts in connection with any loss, damage or enrichment in respect of which an order for payment has been made in terms of subsection (1).
- (3) If for any reason an accounting officer is of the opinion that the amount of a loss or damage determined in terms of subsection (1) should not be recovered or should be recovered in part only from the person responsible therefor, the accounting officer may request the Treasury to waive the claim against such person under section 16 (1) (c) (i) or to authorise under section 20 that he or she be discharged from liability, whether in respect of the whole or a portion of the amount involved.

- (4) If a person who has been ordered to pay an amount in terms of subsection (1), fails to pay such amount within the period of thirty days referred to in that subsection, or within a period of thirty days from the date upon which such amount has in terms of an authorisation or an order referred to in subsection (5) or (6) been reduced, the accounting officer concerned or the Treasury, as the case may be, shall recover the amount concerned-
- (a) in the case of a person employed in an office, ministry or agency, by way of a deduction from such person's monthly salary or, if the amount exceeds one-fourth of such person's gross monthly salary, by monthly deductions not exceeding one-fourth of such person's gross monthly salary;
  - (b) in the case of a person who is not employed in an office, ministry or agency by judicial proceedings.
- (5) A person who has been ordered to pay an amount in terms of subsection (1), may, within the period of thirty days referred to in that subsection, request the Treasury or waive the claim against him or her under section 16 (1) (c) (i) or to authorise under section 20 that he or she be discharged either wholly or partly from liability in respect of such amount.
- (6) Any person in respect of whom a request referred to in subsection (5) has been refused may-
- (a) within a period of thirty days after he or she has been informed of such refusal, appeal in writing against such refusal to the Minister, and the Minister may, after such investigation as the Minister may deem necessary, dismiss such appeal or order that the person be discharged either wholly or partly from liability, or
  - (b) within the period referred to in paragraph (a), or such further period as the court may allow, apply to a competent court for an order setting aside the order for payment made in terms of subsection (1) or reducing the amount determined under that subsection, and such court may set aside such order for payment or reduce such amount if the accounting officer or the Treasury, as the case may be, cannot satisfy the court that the merits of the case justified the making of such an order for payment or that the amount so determined is correct.
- (7) An amount payable in terms of this section shall for the purposes of section 35 be deemed to be a debt due to the State Revenue Fund as from the date of expiry of the period contemplated in subsection (4).
- (8) The provisions of subsection (1) shall not apply to any person who is or was an accounting officer and who caused any loss or damage as contemplated in paragraph (a) of that subsection resulting from an instruction given by the Minister responsible for the office, ministry or agency concerned or, in a case where the accounting officer is or was a person other than the chief executive officer of the office, ministry or agency, by the permanent secretary of such office, ministry or agency, if-
- (a) such accounting officer has beforehand pointed out in writing to the Minister or the permanent secretary, as the case may be-

- (i) the provisions of subsection (1); and
    - (ii) that if such instruction is carried out such a loss or damage may be caused; and
  - (b) such Minister or permanent secretary, as the case may be, has nevertheless urged in writing that the instruction be carried out.
- (9) Notwithstanding the provisions of paragraph (a) of subsection (4), the accounting officer concerned or the Treasury, as the case may be, may cause the amount involved to be recovered by way of judicial proceedings, instead of monthly deductions as contemplated in that paragraph, if the accounting officer or the Treasury, as the case may be, deems it advisable in any particular case.

## **12 Accounts and statements**

- (1) As soon as practicable, but not later than six months after the end of a financial year, the Permanent Secretary: Finance shall, subject to the provisions of subsection (3), prepare in respect of the financial year concerned, in such form as the Permanent Secretary: Finance may determine after consultation with the Auditor-General-
- (a) a statement setting out the total revenue to the benefit of, and the expenditure as a charge to, the State Revenue Fund;
  - (b) a statement setting out-
    - (i) the total debt as a charge to the State Revenue Fund;
    - (ii) the amount of such debt incurred and redeemed during the financial year;
    - (iii) the interest paid in respect of all such debt; and
    - (iv) the expenditure incurred in connection with such debt;
  - (c) a statement setting out the revenue received under the different heads of revenue shown in the estimate of revenue;
  - (d) such other statements and accounts as the Auditor-General may require after consultation with the Permanent Secretary: Finance.
- (2) The Permanent Secretary: Finance shall transmit the statements and accounts referred to in subsection (1) to the Auditor-General for investigation, examination and auditing.
- (3) For the purposes of preparing the statements and accounts referred to in subsection (1), the Permanent Secretary: Finance shall not take into account any transactions in relation to the affairs of the Post Office Savings Bank referred to in section 52 of the Post Office Act, 1958 (Act 44 of 1958), but the officer occupying the post of Postmaster-General in terms of that Act, shall in respect of each financial year prepare a balance-sheet and a revenue and expenditure account in relation to the said Post Office Savings Bank and transmit such balance-sheet and revenue and expenditure account to the Auditor-General not later than six months after the end of the financial year concerned.

### **13 Appropriation accounts**

- (1) The Permanent Secretary: Finance shall as soon as practicable, but not later than six months after the end of a financial year, prepare an appropriation account in respect of each main division of each vote specifying-
  - (a) on the receipts side thereof, the amount mentioned in the estimate of expenditure, but with such adjustments to any amount so mentioned as may be necessary by reason of any utilization in accordance with the provisions of paragraph (a) of subsection (1) of section 16 or any withholding or suspension under paragraph (b) of that subsection;
  - (b) on the expenditure side thereof the amount actually expended, and transmit such appropriation account to the accounting officer concerned before expiry of the said period of six months.
- (2) Every accounting officer shall as soon as practicable, but not later than fifteen days from the date of receipt of an appropriation account in terms of subsection (1), sign such appropriation account and return it together with explanations of the causes of any variations in excess of two percent between the amounts referred to in paragraphs (a) and (b) of subsection (1) to the Permanent Secretary: Finance.
- (3) The Permanent Secretary: Finance shall transmit the appropriation accounts referred to in subsection (2) as soon as practicable, but not later than seven months after the end of the financial year concerned, to the Auditor-General for auditing.

### **14 Designation of internal auditors**

The Treasury may designate as internal auditor or auditors any officer or officers of the Ministry of Finance to carry out investigations at offices, ministries, agencies and statutory institutions in connection with any matter relating to the functions of the Treasury and to determine whether the provisions of this Act or any instructions issued under section 24 have been or are being complied with.

[S.14 substituted by s.39 of Act 13 of 1995.]

### **15 Internal auditor shall have access to accounts, documents, books and records**

- (1) An internal auditor designated under section 14 shall perform his or her functions subject to the directions of the Treasury and shall have access to all such accounts, documents, books and records of any office, ministry, agency or statutory institution as may be necessary for performing his or her functions.
- (2) In the event of any dispute arising as to whether access to any account, document, book or record is necessary for the performance of an internal auditor's functions under this Act, the dispute shall be referred to the Minister and the decision of the Minister thereon shall be final.

## PART II

### GENERAL POWERS OF TREASURY AND TREASURY AUTHORISATIONS

#### 16 General powers of Treasury

(1) The Treasury may-

- (a) notwithstanding the provisions of section 6, authorise that a saving on-
  - (i) a Column 2 amount of a vote or on an amount mentioned in a main division of a vote, be utilized towards the defrayal of anticipated expenditure which may result in an excess of an amount mentioned in any main division of the vote concerned, including a main division established under section 9 (1) (c); or
  - (ii) an amount mentioned in a subdivision of a main division of a vote, be utilized towards the defrayal of anticipated expenditure which may result in an excess of an amount mentioned in any other subdivision of the main division concerned, including any new subdivision which may be established with the authorisation of the Treasury;
- (b) notwithstanding anything to the contrary in this Act or any other law contained, in its discretion, from time to time withhold or suspend the disbursement of any amount of money mentioned in an estimate of expenditure or in respect of which the withdrawal has been authorised under section 9 or which has been appropriated by or under any law, including a law whereby money has been appropriated for a statutory institution;
- (c) subject to the provisions of this Act or any other law-
  - (i) waive any claim in terms of section 11 of this Act or in terms of any other law resulting from any loss or damage or unjust enrichment contemplated in the said section II;
  - (ii) authorise any refund of revenue by way of grace;
  - (iii) authorise any payment by way of grace from State moneys;
  - (iv) authorise any person to be discharged from liability by way of grace in respect of any money due to the State Revenue Fund by such person;
  - (v) authorise that any loss of or damage to State moneys for which no person is liable or any other amount due to the State, except fines imposed by courts of justice, be written off;
  - (vi) make recommendations to the Minister in relation to the form and contents of an estimate of expenditure;
  - (vii) determine the vote or main division of a vote to be charged with any particular expenditure;

- (viii) make recommendations to the Minister in relation to the various heads of revenue of an estimate of revenue under which revenue is to be received;
- (ix) determine the conditions on which revenue is to be collected and the manner in which State moneys may be received by an accounting officer;
- (x) authorise or condone, to such extent as the Treasury may think fit, the non-compliance with any instruction, determination or condition issued, made or laid down by the Treasury in terms of this Act or any other law, or with the provisions of section 23 (1) (b).

(2) The provisions of paragraph (c) (ii), (iii) and (iv) of subsection (1) shall not apply-

- (a) if the amount involved in a particular case exceeds R20 000;
- (b) in relation to any taxes, levies, duties or fees referred to in paragraph (a) of the definition of "revenue" in section 1

(3) The utilization of any saving in accordance with paragraph (a) of subsection (1) shall have the effect that the relevant amounts mentioned in the estimate of expenditure affected by such utilization, be increased or decreased, as the case may be.

(4) Any moneys withdrawn from the State Revenue Fund in terms of paragraph (c) (ii) or (iii) of subsection (1) shall be deemed to have been appropriated by law.

(5) The Treasury shall-

- (a) keep record of every withholding or suspension under paragraph (b) of subsection (1) and shall without delay notify the Permanent Secretary, the accounting officer concerned and the Auditor-General of every such withholding or suspension;
- (b) inform the Permanent Secretary: Finance and the Auditor-General as soon as practicable of cases in respect of which claims have been waived under paragraph (c) (i) of subsection (1).

(6) The Treasury shall not exercise the power conferred upon it by paragraph (c) (i) of subsection (1) unless it is satisfied that-

- (a) the amount involved is irrecoverable or the recovery thereof would be uneconomical;
- (b) the recovery of the amount involved would cause undue hardship to the debtor or his or her dependants because they would be deprived of their minimum essential means of livelihood; or
- (c) it would be to the advantage of the State to waive any such claim.

**17 Prohibition on incurring expenditure or making payments without Treasury authorisation**

Subject to the provisions of this Act and notwithstanding anything to the contrary in any other law contained-

- (a) no expenditure shall be incurred as a charge to the State Revenue Fund;
- (b) no payments shall be made as a charge to the State Revenue Fund;
- (c) no fees or charges, or the rates, scales or tariffs thereof, shall be determined as a charge to the State Revenue Fund,

without the authorisation of the Treasury.

**18 Prohibition on unauthorised disposal of movable and immovable properties of State**

Notwithstanding anything to the contrary in any other law contained, no movable and no immovable property of the State shall be alienated, let, exchanged, donated or otherwise disposed of without the authorisation of the Treasury.

**19 Prohibition on acceptance of gifts to State without Treasury authorisation**

- (1) Notwithstanding anything to the contrary in any other law contained, no gifts to the State shall be accepted without the authorisation of the Treasury.
- (2) The Treasury may, whenever it is not apparent to what purpose a gift referred to in subsection (1) has been made, determine the purpose to which any such gift shall be utilized or in what manner it shall otherwise be disposed of.

**20 Discharge from liability in respect of money due to State Revenue Fund**

- (1) Subject to the provisions of any law, no person shall be discharged from liability in respect of any money due to the State Revenue Fund without the authorisation of the Treasury.
- (2) The provisions of section 16 (6) shall *mutatis mutandis* apply in relation to the authorisation referred to in subsection (1).

**21 Prohibition on variation of contracts or settlement or waiver of claims. without Treasury authorisation**

Notwithstanding anything to the contrary in any law contained-

- (a) no contract in which the State is a party shall be cancelled or varied to the detriment of the State;

- (b) no claim by the State resulting from any loss or damage or unjust enrichment contemplated in section 11, whether or not instituted by way of judicial proceedings, shall be waived or settled;
- (c) no claim against the State shall be settled, without the authorisation of the Treasury.

## **22 Prohibition on rendering of free services without Treasury authorisation**

Notwithstanding anything to the contrary in any law contained-

- (a) no services shall be rendered free by any office, ministry or agency to any person without the authorisation of the Treasury;
- (b) no fees or charges, or the rates, scales or tariffs of fees or charges, shall be determined in respect of services rendered by an office, ministry or agency for the benefit of the State Revenue Fund without the approval of the Treasury.

## **23 Authorisations or approvals of or determinations by the Treasury**

(1) Any authorisation or approval or determination which is required from, or may be made by, the Treasury in terms of this Act or any other law-

- (a) shall, if it is granted or made, be granted or made by the Treasury in writing;
- (b) shall, subject to the provisions of section 16 (1) (c) (x), be acquired or made beforehand;
- (c) may be granted or made by the Treasury in respect of any specific case or by way of a general direction;
- (d) may be granted or made by the Treasury on such conditions as it may deem fit;
- (e) may at any time be varied or withdrawn by the Treasury.

(2) The Treasury shall as soon as practicable inform the Permanent Secretary: Finance and the Auditor-General of all cases in respect of which it has, whether in terms of this Act or any other law, granted any authorisation or approval or has issued, made or laid down any instruction, determination or condition.

## **24 Treasury instructions**

(1) The Treasury may issue instructions-

- (a) conferring or imposing additional powers and duties on an accounting officer in relation to-
  - (i) the manner in which and the procedure according to which any power or duty conferred or imposed in terms of this Act or any other law shall be executed;



- (ii) the planning of services by such accounting officer's office, ministry or agency and the submission to the Treasury of draft estimates and other information in connection therewith;
  - (iii) the advantageous utilization of moneys appropriated in relation to such accounting officer's vote;
- (b) providing for the designation of-
  - (i) any person employed in the Ministry of Finance as Accountant-General;
  - (ii) any person employed in an office, ministry or agency as financial adviser of the accounting officer of the office, ministry or agency concerned;
  - (iii) persons employed in an office, ministry or agency as receivers of revenue,and prescribing the powers and duties of such person or persons;
- (c) prescribing, subject to the provisions of section 4, a system which shall be observed in relation to the collection, receipt, custody, banking, payment, disposal and control of, accounting for, and supervision over State moneys and providing for any examination in relation to any such system;
- (d) prescribing a system which shall be observed in relation to the control over and the disposal and stocktaking of, stamps, securities held in respect of debts due to the State Revenue Fund, forms having a face or potential value, equipment, stores and other movable goods owned or leased by the State, and providing for any examination in relation to any such system;
- (e) prescribing the powers, duties and functions of internal auditors designated under section 14;
- (f) prescribing the nature of and the manner in which submissions and other documents which are to be submitted to the Treasury or, in accordance with the provision of this Act, to the Minister;
- (g) prescribing the documents which are to be submitted to the Treasury with a view to the acquisition of any authorisation or approval or determination which may be granted or made by the Treasury in terms of this Act or any other law or by the Minister in terms of this Act;
- (h)
  - (i) granting or making by way of general directions, subject to the provisions of section 23 (1) (d), any authorisation or approval or determination which may be granted or made by the Treasury in terms of this Act or any other law;
  - (ii) entrusting, by way of general directions, the duties imposed upon the Permanent Secretary: Finance by section 4, 12 or 13, to one or more permanent secretaries;
- (i) prescribing a system in relation to the accounting by the Permanent Secretary: Finance for loans raised in terms of this Act, the manner

in which interest on such loans may be paid, and the issue of securities in connection therewith;

- (j) prescribing the registers to be kept in relation to immovable property owned or leased by the State or in or over which any right is held by the State, and the information to be recorded in such registers;
- (k) providing generally for the administration of the provisions of this Act.

(2) The Treasury may by way of an instruction issued under subsection (1), empower an accounting officer to issue directions to be complied with in such accounting officer's office, ministry or agency in relation to the matters referred to in paragraphs (c) and (d) of subsection (1).

### **PART III**

#### **DUTIES AND POWERS OF**

#### **AUDITOR-GENERAL**

##### **25 Duties of Auditor-General**

(1) The Auditor-General shall-

- (a) subject to the provisions of subsection (3), investigate, examine and audit-
  - (i) the account-books, accounts and registers referred to in section 4;
  - (ii) the statements and accounts referred to in sections 12 and 13;
  - (iii) any other account-books, accounts and registers prescribed under section 24;
- (b) investigate, examine and audit the account-books, accounts, registers or statements which are to be kept or prepared in terms of any law in connection with the collection, receipt, custody, banking, payment or issue of money, stamps, securities, equipment and stores by any statutory institution and which are in terms of any law to be investigated, examined and audited by the Auditor-General;
- (c) satisfy himself or herself-
  - (i) that all reasonable precautions have been taken to ensure that all moneys to which the investigation, examination and audit relate, are collected;
  - (ii) that the laws relating to the collection of such moneys have been complied with;
  - (iii) that all reasonable precautions have been taken in connection with the receipt, custody and issue of, and accounting for, stamps, securities, forms having a face or potential value, equipment, stores and other movable goods;

- (iv) that expenditure or payments in respect of which authorisations or approvals are required in terms of this Act or any other law have been incurred or made under and in accordance with such authorisations or approvals and have been supported by adequate vouchers or other proof or, if the voucher or other proof is defective or has been lost or destroyed, that the Treasury or, in the case of a statutory institution, the executive authority thereof, has on the grounds thereof that the said expenditure or payments have in its opinion been lawfully incurred or made, authorised the Auditor-General to dispense with the production of such voucher or other proof.
- (2) Whenever the President deems it necessary in the public interest, the President may require the Auditor-General to investigate, examine and audit in accordance with the provisions of this Act, the account-books, accounts, registers or statements of any body, association or organisation other than a statutory institution, as if such body, association or organisation were a statutory institution.
- (3) If, by reason of the confidential nature of any account, the President is of the opinion that such account should be excluded from a detailed examination under this Act, the President may, after consultation with the Auditor-General, determine to what extent the investigation, examination and auditing thereof is to be carried out and which vouchers are to be made available for such investigation, examination and auditing.

## **26 Powers of Auditor General**

(1) Whenever the Auditor-General performs his or her duties in terms of this Act-

- (a) the Auditor-General may-
  - (i) in his or her discretion, determine the extent of any investigation, examination and audit;
  - (ii) by notice in writing require any person to appear before him or her In connection with the account-books, accounts, registers or statements which are being investigated, examined and audited by him or her, at a time and place mentioned in such notice and to produce to him or her all such books, vouchers or other documents in the possession or under the control of such person as the Auditor-General may deem necessary in connection with such Investigation, examination and audit;
- (b) the Auditor-General or any competent person employed in the office of the Auditor-General-
  - (i) shall have access to all books, vouchers, other documents, money, stamps, securities, forms having a face or potential value, equipment. stores and other movable goods owned or leased by the State or the statutory institution concerned, in the possession or under the control of any person and which

the Auditor-General deems necessary for an investigation, examination and audit in terms of this Act;

- (ii) may request such particulars, accounts and statements as he or she deems necessary for such an investigation, examination and audit;
  - (iii) may, without payment of any fee, investigate and make extracts from, or copies of, any book, voucher or document which he or she deems necessary for such an investigation, examination and audit;
  - (iv) may investigate whether any moneys in question have been expended in an efficient, effective and economic manner;
  - (v) may investigate and enquire into any matter, including the efficiency of internal control measures, connected with expenditure chargeable to, and revenue to the benefit of, the State Revenue Fund or the funds of the statutory institution concerned;
  - (vi) may administer an oath to or accept an affirmation from any person whom he or she thinks fit to interrogate in connection with an investigation, examination and audit in terms of this Act, and interrogate such person in connection with the collection, receipt, custody, banking or payment of, or accounting for, moneys, or the receipt, custody and issue of, and accounting for, stamps, securities, forms having a face or potential value, equipment, stores or other movable goods owned or leased by the State or the statutory institution concerned or in connection with any other matter which the Auditor-General deems necessary for exercising his or her powers or performing his or her duties.
- (2) The Auditor-General may, on such conditions as may be agreed upon, enter into an agreement with one or more persons to assist the Auditor-General carrying out an investigation, examination and audit of the accounts of any statutory institution.
- (3) Any person who assists the Auditor-General by virtue of an agreement referred to in subsection (2), shall carry out an investigation, examination and audit subject to such directives as the Auditor-General may deem expedient to give and shall have such powers and perform such duties as are by this Act or any other law conferred or imposed upon a person employed in the office of the Auditor-General.

## **27 Reports of Auditor-General**

- (1) As soon as practicable after the end of a financial year, but not later than the end of the following financial year, the Auditor-General shall transmit to the Minister the accounts together with his or her certificate and a report signed by him or her in connection with any investigation, examination and auditing carried out by him or her in terms of this Act or any other law and shall, in the case of a statutory institution, at the same time transmit a copy

of his or her report to the executive authority of the statutory institution concerned.

- (2) Notwithstanding the provisions of subsection (1), the Auditor-General may, in the case of municipalities and village management boards, submit, instead of individual reports, a summarised report in respect of all municipalities and village management boards.
- (3) The Auditor-General may at any time, if he or she deems it necessary, transmit a special report on any matter connected with the Auditor-General's duties and powers under this Act or any other law to the Minister.
- (4) The Minister shall within thirty days after receipt thereof, cause the accounts, certificate and report transmitted to the Minister in terms of subsection (1) or a special report transmitted in terms of subsection (3), to be laid upon the Table of the National Assembly if the National Assembly is then in session or, if the National Assembly is not then in session, within fourteen days after the commencement of its next ensuing session.
- (5) If the Minister does not cause the accounts, certificate and report or a special report received by the Minister in terms of subsection (4), to be laid upon the Table of the National Assembly within the period prescribed by that subsection, the Auditor-General shall forthwith transmit copies of such accounts, certificate and report or such special report, as the case may be, to the Speaker of the National Assembly, who shall lay them upon the Table of the National Assembly.
- (6) The Auditor-General shall, in a report referred to in subsection (1), draw attention to-
  - (a) every unauthorised expenditure incurred;
  - (b) any utilisation of moneys for a service which in the Auditor-General's opinion is wasteful or otherwise detrimental to the State or the statutory institution concerned, as the case may be;
  - (c) any use or custody of stamps, securities, forms having a face or potential value, equipment, stores or other movable goods owned or leased by the State or the statutory institution concerned in a manner which in the Auditor-General's opinion is detrimental to the State or the statutory institution concerned, as the case may be;
  - (d) any other matter which in the Auditor-General's opinion should in the public interest be brought to the notice of the National Assembly.

## **28 Expenditure in connection with auditing**

- (1) The expenditure on the services of the Auditor-General in connection with any investigation, examination and audit referred to in section 25, shall, subject to the provisions of subsection (2), be defrayed from the State Revenue Fund.
- (2) The Treasury may, after consultation with the Auditor-General, determine an amount which shall be paid to the benefit of the State Revenue Fund by

a statutory institution in connection with any investigation, examination and audit in terms of section 25 (1) (b).

## **PART IV**

### **LOANS BY STATE AND DETERMINATION OF INTEREST RATES IN RESPECT OF LOANS CHARGEABLE TO AND DEBTS TO THE BENEFIT OF THE STATE REVENUE FUND**

#### **29 Raising of loans**

(1) The Minister may at any time-

- (a) borrow moneys within or outside Namibia-
  - (i) to finance anticipated deficits in the State Revenue Fund;
  - (ii) to obtain foreign currency;
  - (iii) to maintain such credit balance in the State Account as the Minister may deem necessary in the public interest;
- (b) borrow moneys within Namibia to regulate properly the internal monetary conditions.

(2) In exercising the powers conferred by subsection (1), the Minister may-

- (a) enter into agreements with banks or other financial institutions, including the Bank, an international bank or a foreign financial institution and, subject to delegation of such power by the President under Article 32 (3) (e) of the Namibian Constitution, with foreign governments;
- (b) make issues of treasury bills and public stock within or outside Namibia and issue bonds; and
- (c) issue bills of exchange or debentures for terms not exceeding twelve months,

on such terms and conditions as the Minister may deem fit and may issue or furnish such securities required to be issued or furnished therefor or which are considered to be necessary.

(3) The Permanent Secretary: Finance may in his her discretion issue or publish notices or prospectuses in which the terms and conditions are made known on which the issue of treasury bills, stock and bonds referred to in paragraph (b) of subsection (2), or bills of exchange or debentures referred to in paragraph (c) of that subsection, are to be made or issued, as the case may be, and which securities, if any, are to be issued or furnished in respect thereof.

(4) Agreements entered into and securities issued in terms of subsection (2) shall be signed-

- (a) in the case of agreements referred to in paragraph (a) of that subsection and securities for loans raised thereunder, by the Minister or any person authorised thereto by the Minister in writing;

- (b) In the case of securities for loans raised under paragraph (b) or (c) of that subsection, by the Permanent Secretary: Finance or any person authorised thereto by the Permanent Secretary: Finance in writing.
- (5) If any security issued in terms of subsection (2) becomes lost or is destroyed or damaged, the Permanent Secretary: Finance may upon payment of an amount determined by the Treasury and on such conditions as the Permanent Secretary: Finance may determine, replace any such security.
- (6) An agreement entered into in terms of paragraph (a) of subsection (2) may provide that money borrowed thereunder may at any time while the agreement is in force be repaid in whole or in part and that an amount so repaid shall again be available for drawing in terms of that agreement.

### **30 Duties of Permanent Secretary in relation to issue and transfer of public stock**

- (1) The Permanent Secretary: Finance shall in respect of internal registered stock-
  - (a) keep registers in which shall be entered-
    - (i) the name and address of each holder of such stock;
    - (ii) the amount of such stock held by each holder; and
    - (iii) in respect of each holder-
      - (aa) the date on which the particulars referred to in subparagraphs (i) and (ii) have been so entered;
      - (bb) the date on which he or she ceased to be such a holder;
  - (b) issue a certificate for the full amount of the stock to any person who has paid the full amount in respect of such stock allocated on application to him or her by the Permanent Secretary: Finance or, in the case of a transfer in terms of subsection (2) of such stock, to the transferee who shall lodge with the Permanent Secretary: Finance the form referred to in that subsection together with the certificate issued to the transferor.
- (2) Internal registered stock may be transferred by the holder thereof to any other person by means of a transfer form prescribed by the Permanent Secretary: Finance and by delivery of the certificate issued under paragraph (b) of subsection (1).
- (3) A certificate issued under paragraph (b) of subsection (1) shall be *prima facie* evidence of the title of the person mentioned in the certificate as the holder of the stock in question, to such stock.

### **31 Conversion of stock issued outside Namibia**

The Permanent Secretary: Finance may upon the request of the holder thereof, in his or her discretion, convert stock issued outside Namibia under paragraph (b) of subsection (2) of section 29 into stock issued in Namibia

under the said paragraph (b), at such value as the Permanent Secretary: Finance may determine and subject to the conditions determined at the time of the making of the issue thereof, except that the principal amount and interest thereon shall be payable in Namibia.

### **32 Expenditure in connection with loans**

Whenever in the raising of a loan under this Act or any other law the gross amount of the loan is reduced by any expenditure, including any discount and commission, such expenditure shall be deemed to be appropriated by law as a charge to the State Revenue Fund and the amount of such loan shall be increased by the amount of such expenditure.

### **33 Appointment of agents**

The Minister may within Namibia or elsewhere enter into an agreement with any person, including a financial institution, providing for the exercise or performance, on the terms and conditions agreed upon, by such person of any power or duty which in terms of this Act may be or is required to be exercised or performed by the Minister or the Permanent Secretary: Finance in relation to the issue, transfer, administration, purchase or repayment of securities.

### **34 Minister not liable for obligation resulting from lien over or cession of securities**

The Minister shall not be liable for any obligation resulting from a lien over or the cession of any security issued under this Act.

### **35 Interests rates and conditions in respect of loans other debts and permanent capital**

The Minister may determine from time to time-

- (a) rates of interest which shall be applicable to loans granted by or under any law as a charge to the State Revenue Fund;
- (b) rates of interest which shall be applicable to debts other than loans referred to in paragraph (a) due to the State Revenue Fund;
- (c) the rate at which interest shall be paid in respect of money paid from the State Revenue Fund as permanent capital,

and, subject to any provision to the contrary in any law contained, interest shall be paid at such rates on such loans, debts or permanent capital, as the case may be.

## **PART V**

### **GENERAL PROVISIONS**



### **36 General power of Minister to furnish and guarantees. indemnities and securities**

If the Minister deems it desirable or necessary in the public interest, the Minister may at any time, on such conditions as the Minister may determine, furnish a guarantee, indemnity or security in respect of any financial commitment incurred or to be incurred by any board or body established by or under any law, bank, company or juristic person, whether within or outside Namibia.

### **37 Delegation and assignment of powers and duties**

(1) The Minister may on such conditions as the Minister may determine, delegate to the holder of any post in the Ministry of Finance-

- (a) any power or duty conferred or imposed upon the Minister by this Act, except the powers conferred by sections 9, 1 (6) (a), 27, 29, 33 and 35;
- (b) any power or duty conferred upon the Treasury by this Act or any other law.

(2) The Treasury may, on such conditions as it may determine-

- (a) assign in writing to any permanent secretary any duty imposed upon the Permanent Secretary: Finance by section 4, 12 or 13, in so far as such duty is required to be performed in relation to the vote of such chief executive officer's office, ministry or agency;
- (b) delegate to an accounting officer the power conferred upon it by section 16 (1) (c) (v).

(3) The Permanent Secretary: Finance may on such conditions as he or she may determine-

- (a) delegate the power conferred upon him or her by section 10 (1) (b) (ii) to the holder of any post in an office, ministry or agency in so far as that power relates to such ministry or public office;
- (b) delegate the powers conferred upon him or her-
  - (i) by section 10 (1) (b) (iii) in relation to the payment of interest on moneys borrowed in terms of this Act; and
  - (ii) by section 10 (1) (b) (iv) for the repayment of moneys borrowed in terms of this Act and the repurchase or repayment of securities issued under this Act,

but only in so far as debentures and bills of exchange are involved, to the holder of a post in the Ministry responsible for communication;

- (c) delegate or assign to the holder of any post in the Ministry of Finance any power or duty conferred or imposed upon him or her by this Act, except a power or duty relating to his or her capacity as accounting officer.

(4) A permanent secretary may delegate or assign to the holder of any post in his or her office, ministry or agency any power or duty conferred or

imposed upon him or her by or under this Act, including a duty assigned to him or her under subsection (2) (a), but excluding any power or duty relating to his or her capacity as accounting officer.

- (5) Where any power has been delegated under any provision of this section, the Minister, the Treasury, the Permanent Secretary: Finance, or the permanent secretary, as the case may be, shall not be divested of the power so delegated and the Minister, Treasury, Permanent Secretary: Finance or permanent secretary, as the case may be, may at any time withdraw or vary any decision taken by virtue of the power so delegated.

### **38 Repeal and savings**

- (1) Subject to the provisions of subsection (2), the State Finance Act, 1982 (Act 1 of 1982) and the State Finance Amendment Act, 1988 (Act 4 of 1988), are hereby repealed.
- (2) Anything done under a provision of a law repealed by subsection (1), and which could have been done under a corresponding provision of this Act, shall be deemed to have been done under the provision of this Act.
- (3) The Central Authority Account maintained at the Bank in terms of section 2 of the State Finance Act, 1982 before the commencement of this Act, shall, as from such commencement, continue to be maintained as the State Account in terms of section 2 (1) of this Act.
- (4) Notwithstanding the repeal of the State Finance Act, 1982 by subsection (1) of this Act, the provisions of section 22, except subsection (1) thereof, and anything done under those provisions, as it existed before the said repeal, shall continue to apply and be effective in relation to the person who at the commencement of this Act holds office as Auditor-General and shall so apply and be effective for the duration of the period the said person holds that office.

### **39 Short title**

This Act shall be called the State Finance Act, 1991.