

BILL

To give effect to the National Equitable Economic Empowerment Framework; provide for the appointment of the Commissioner of Equitable Economic Empowerment; provide for a standards of equitable economic empowerment and sector transformation charters; and to provide for incidental matters.

(Introduced by the Prime Minister)

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PREAMBLE

RECALLING that the past racial discriminatory laws, policies and practises denied the empowerment beneficiaries access to skills, resources and ownership, management and control of the Namibian economy;

RECOGNISING the effects of past racial discriminatory laws, policies and practices, on empowerment beneficiaries, that led to wealth and income disparities and inequitable participation in the growth

management, control of the Namibian economy;

NOTING WITH CONCERN the threats posed, by the effects of past racial discriminatory laws, policies and practices, to the rule of law, peace, stability, security, justice, democracy and sustainable development in Namibia;

DETERMINED TO create a Namibian economy based on economic growth and equitable and sustainable distribution of wealth and income, with the aim of improving the wellbeing of the Namibian society;

ACKNOWLEDGING that the Namibian Constitution in Article 23(2) mandates Parliament to enact legislation providing directly or indirectly for the advancement of persons who suffered as a result of past discriminatory laws, policies and practises; and Article 95(a) imposes a positive obligation on the State to give effect to the constitutional commitment to promote and maintain the welfare of the people of Namibia; and that Government adopted the New Equitable Economic Empowerment Framework as the overarching policy framework for equitable economic empowerment in Namibia;

DESIRING THAT the law must create the enabling environment fostering economic growth and wealth redistribution, and promoting the equitable economic empowerment of empowerment beneficiaries;

DESIRING ALSO to promote, facilitate and strengthen measures to implement the equitable economic empowerment and ancillary policies of the government including promoting the empowerment gains achieved personally or through other government policies, practices and initiatives in existence before the enactment of this law;

DESIRING FURTHER THAT consideration must be given to workers and broad based communities;

BE IT THEREFORE ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

CHAPTER 1 PRELIMINARY PROVISIONS

Definitions

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

“accreditation body” means an institution referred to in section 16(1) and 16(2);

“Commissioner” means the National Equitable Economic Empowerment Commissioner appointed under section 3;

“empowerment beneficiary” means -

- (a) Namibian citizens that were racially disadvantaged by colonial and apartheid laws, policies and practises before 21 March 1990; and
- (b) descendants of persons contemplated in paragraph (a), who -
 - (i) are Namibian citizens, by birth or descent; or
 - (ii) became citizens of Namibia by naturalization before 21 March 1990 or on or after 21 March 1990 according to applicable laws;

“empowerment transaction” means a transaction, practice, scheme or other initiative which affects compliance with this Act or any other law promoting equitable economic empowerment;

“empowerment industrialists” means empowerment beneficiaries involved in the establishment, creation, significant ownership, management and operation of industrial entities that derive value from the manufacturing of goods at a large scale;

“equitable economic empowerment” means the process of enabling all empowerment beneficiaries, including to participate in the economy, share in the wealth and contribute to economic growth, through diverse but integrated strategies that include -

- (a) increasing the number of empowerment industrialists;
- (b) increasing the number of empowerment beneficiaries that manage, own and control entities and productive assets;
- (c) facilitating ownership and management of entities and productive assets by communities, workers, cooperatives and other collective entities;
- (d) human resource and skills development;
- (e) achieving equitable representation in all occupational categories and levels in the workforce; and
- (f) procurement and investment in entities that are owned, controlled or managed by empowerment beneficiaries;
- (g) promoting and facilitating access to finance for entities of empowerment beneficiaries;

“Executive Director” means the person appointed under section 3(3) of the Public Service Act, 1995 as the Executive Director of the Ministry;

“fronting practise” has the meaning assigned to it in section 17;

“investigator” means a person appointed as an investigation officer in terms of section 11 or as a special investigator in terms of section 12;

“Minister” means the Minister designated under section 26(1)(a);

“Ministry” means the Ministry determined under section 26(1)(b) to be charged with the administration of this Act;

“pillars of equitable economic empowerment” means the pillars referred to in section 13;

“public entity” means an office, ministry or agency of the government, and includes -

- (a) a local authority council;

- (b) a regional council;
- (c) a public enterprise as referred to in the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006); and
- (d) a body or trust that is owned or controlled by the Government, when engaged in any public function individually or in consortium;

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

“prescribed” means prescribed by the Minister by regulation;

“sector transformation charter” means the sector transformation charter published in terms of section 15;

“standards of equitable economic empowerment” means the standards for equitable economic empowerment published in terms of section 14;

“this Act” includes the regulations made or standards or notices issued under it;

“verification” means the process aimed at examining, confirming and validating the equitable economic empowerment status of an entity;

“verification agency” means an institution accredited by the accreditation body for the purpose verifying and rating entities for compliance with equitable economic empowerment; and

“verification official” means an individual accredited by the accreditation body for the purpose of verifying and rating entities for compliance with equitable economic empowerment.

Conflict with other laws

2. If there is a conflict between this Act and any other law in force before the date of commencement of this Act, this Act prevails in respect of a matter dealt with specifically in this Act.

CHAPTER 2

EQUITABLE ECONOMIC EMPOWERMENT COMMISSIONER

Appointment of Commissioner

3. (1) The National Assembly must appoint the Commissioner of Equitable Economic Empowerment, upon nomination by the President.

(2) Despite the provisions of the Public Service Act, 1995, the President may nominate for appointment a person whom the President considers suitable and who -

- (a) is of good character and of high integrity; and
- (b) possesses knowledge or experience relevant to the functions of the Commissioner.

Powers and functions of Commissioner

4. The powers and functions of the Commissioner are, to -

- (a) enforce and monitor compliance with this Act;
- (b) promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of equitable economic empowerment laws and policies of the Government;
- (c) advice public entities, private sector institutions and the general public on specific issues relating to equitable economic empowerment;
- (d) investigate complaints of fronting practises and other matters requiring investigation in terms of this Act;

- (e) recommend to appropriate authorities to institute civil or criminal charges against any person who has committed or is alleged to have committed an offence under this Act;
- (f) educate public entities, private sector institutions and the general public on the provisions of this Act;
- (g) foster cooperation between the public entities and private sector institutions in order to promote and safeguard the objects of this Act;
- (h) review on his or her own initiative, as directed by the Minister or as required under this Act the progress made on the implementation of this Act;
- (i) conduct research, prepare reports and other documents relating to equitable economic empowerment as required by this Act or as directed by the Minister;
- (j) study and review existing laws and make recommendations to the Minister for legislative proposals as may be necessary for the purpose of achieving the objects of this Act;
- (k) study and review existing policies and initiatives relating to equitable economic empowerment, and annually or as directed by the Minister make recommendations to the Minister for amendments or improvements as may be necessary for the purpose of achieving the objects of this Act;
- (l) prepare and issue guidelines and manuals, including any other incidental documents for use by entities who are subject to this Act;
- (m) develop and implement empowerment assessment tools to measure effectiveness of the equitable economic empowerment system and processes;

- (n) exercise powers and perform and functions conferred or imposed on the Commissioner by this Act, and any powers that are necessary or expedient for or incidental to the achievement of the objects of the Act; and
- (o) exercise powers and perform functions as may be prescribed by the Minister in the regulations.

Disqualification from appointment as Commissioner

5. (1) For the purposes of this section-

(a) "associate" means -

- (i) an employer;
- (ii) a co-shareholder of a private company contemplated in section 20 of the Companies Act, 2004 (Act No. 28 of 2004);
- (iii) a co-member of a close corporation contemplated in section 2 of the Close Corporations Act, 1988 (Act No. 26 of 1988);
- (iv) a person to whom one has granted or from whom one has received a general power of attorney; and
- (v) a trustee or beneficiary of a trust contemplated in section 1 of the Trust Monies Protection Act, 1934 (Act No. 36 of 1934);

(b) "partner" means a person with whom one has entered into a partnership agreement with the intention of making a profit; and

(c) "spouse" means the partner of a person -

- (i) in a civil marriage; or
- (ii) in a customary union according to customary law.

(2) A person is not eligible to be appointed as Commissioner, if that person -

- (a) is a member of Parliament, regional council or a local authority council;
- (b) is not a Namibian citizen;

- (c) does not reside in Namibia;
- (d) has been convicted of an offence of theft, fraud, forgery or uttering a forged document, perjury or any other offence involving dishonesty;
- (e) has, during the period of 10 years preceding the date of appointment, been convicted of any other offence for which a sentence of imprisonment without the option of a fine has been imposed;
- (f) personally or through -
 - (i) a spouse;
 - (ii) child or any member of his or her household or a person who is related to a second degree of consanguinity to the member; or
 - (iii) partner or associate,

has or acquires an interest in an entity that may conflict or interfere with the exercise of powers or the performance of the functions of the Commissioner in terms of this Act;

- (g) has at any time been removed from an office of trust on account of breach of a fiduciary duty;
- (h) is an un-rehabilitated insolvent; or
- (i) is under any law declared to be of unsound mind.

(3) A person nominated or considered for appointment as a Commissioner may not be appointed as Commissioner unless that person, on notification by the Minister of the proposed nomination, submits to the Minister a written statement in which he or she declares that he or she does not have any financial interest as contemplated in subsection (2)(f).

(4) A Commissioner who acquires or intends to acquire a financial interest contemplated in subsection (2)(f) must disclose full details of such financial interest in writing to the Minister.

(5) The Minister must furnish the statement and disclosure referred to in subsection (3) and (4) to the President and publish the declaration by notice in the *Gazette*.

- (6) A person commits an offence if that person -

(a) in a statement referred to in subsection (3), fails to disclose any interest which the person has as contemplated in that subsection; or

(b) fails to comply with subsection (3),

and is liable to a fine not exceeding N\$60 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

Term of office and conditions of service

6. (1) The Commissioner is appointed on a full-time basis for a term of five years and may be re-appointed at the expiry of that term, subject to a maximum of two terms of office.

(2) The conditions of service of the Commissioner must be determined in terms of the Public Service Act, 1995.

(3) The Commissioner may not -

(a) engage in the day to day management of any other entity or occupation;

(b) take part in the management of the affairs of any political party; or

(c) be a salaried employee of a person, body corporate or an organisation.

Vacation of office

7. The office of the Commissioner becomes vacant if he or she -

(a) resigns from office by 30 days written notice to the President;

(b) becomes subject to a disqualification referred to in section 5; or

(c) is removed from office under section 8.

Removal from office of Commissioner

8. (1) The Commissioner may be removed from office, if he or she -

- (a) has failed to comply with a condition of his or her appointment;
- (b) is unable to perform the functions of his or her office by reason of mental illness or physical illness;
- (c) fails to perform efficiently the duties of his or her office; or
- (d) is found guilty of misconduct.

(2) If the question of termination of the appointment of the Commissioner arises, the President must notify the Chief Justice who, after consultation with the Judicial Service Commission established under Article 85 of the Namibian Constitution, must within 30 days appoint a board to inquire into the matter and submit a report and recommendations to the President.

(3) The board must consist of-

- (a) a chairperson, being a person who-
 - (i) held office as judge of the Supreme Court or the High Court of Namibia; or
 - (ii) is qualified to be appointed as judge of the Supreme Court or the High Court of Namibia;
 and
- (b) two other members who are of good character and integrity.

(4) If the question of termination of the appointment of the Commissioner is referred to the board, the President may suspend the Commissioner from exercising the functions of his or her office pending inquiry by the board, but the suspension lapses if the board recommends to the President that the appointment must not be terminated.

(5) The board must inquire into the matter referred to in under subsection (4) in accordance with such rules as the board may make, which rules must conform to the rules of natural justice.

(6) The board must within 30 days after conclusion of the inquiry submit its report and recommendations to the President.

(7) If the President, on receipt of the board's report and recommendations, finds that the Commissioner must be removed from office, the President must communicate that finding and the reasons for the decision to the National Assembly within 14 days after the finding if the National Assembly is then in session or, if the National Assembly is not then in session, within 14 days after its next session starts.

(8) The President must remove the Commissioner from office upon adoption by the National Assembly of a resolution calling for the removal of the Commissioner from office.

Acting commissioner

9. (1) If the office of the Commissioner is vacant or the Commissioner is absent from duty or unable for any reason to perform the functions of his or her office, the President must appoint a suitable person to act temporarily as Commissioner.

(2) A person appointed as acting Commissioner while the office of the Commissioner is vacant is entitled to the salary attached to that office for the period that he or she so acts.

Investigators

10. (1) Subject to the Public Service Act, 1995, on the recommendation of the Commissioner -

- (a) the Executive Director may appoint persons to be investigators for the purposes of this Act; or
- (b) staff members in the public service may be seconded or transferred to exercise or perform the powers and functions of investigators for the purposes of this Act, and are regarded to be investigators for the purpose of this Act.

(2) An investigator -

- (a) has such powers and functions as may be provided for by this Act or as may be delegated or assigned to the investigator by the Commissioner; and
- (b) must exercise such power and perform such functions in compliance with the directions or instructions as may be specified orally or in writing by the Commissioner.

(3) Subsection (2)(f), (3), (4), (5) and (6) of section 5 applies, with changes required in the context, to the person to be appointed as an investigator or as a special investigator under section 11.

(4) The Commissioner must issue an identification card to a person appointed as an investigator in terms of subsection (1) or as a special investigator in terms of section 11.

(5) The identification card referred to in subsection (2) -

(a) must be signed by the Commissioner; and

(b) is *prima facie* evidence of the appointment of the person concerned.

(6) An investigator must show his or her identification card to any person in relation to whom he or she may seek to exercise any power or perform any function under this Act.

Special investigators

11. (1) On the recommendation of the Commissioner, the Executive Director may appoint a person who has expert skills and knowledge in a particular field to be a special investigator to investigate any matter which an investigator contemplated in section 10 may investigate and which is specified -

(a) in the instrument appointing the special investigator; or

(b) in a written notice given to the special investigator by the Commissioner.

(2) A special investigator is appointed on a temporary basis as agreed between the Commissioner and the person and must perform his or her functions -

(a) subject to the control and direction of the Commissioner; and

(b) on the terms and conditions as the Commissioner and the special investigator may agree.

Annual report

12. (1) The Commissioner must, within two months after 31 March of each year, prepare and submit to the Minister a report on the activities relating to the functions and powers of the Commissioner during the previous year.

(2) Despite subsection (1), the Commissioner may, at any time, prepare and submit to the Minister a special report referring to and commenting on any matter within the scope of his or her powers and functions under this Act if, in his or her opinion, the matter is of such urgency or importance that a report on it must not be deferred until the time provided for the submission of the annual report and submit the report to the Minister.

(3) The Minister must -

- (a) submit the report referred to in subsection (1) and (2) to the Cabinet; and
- (b) table the report referred to in subsection (1) and (2), within 14 days of its receipt if the National Assembly is then in session, or if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

CHAPTER 3

PILLARS OF EQUITABLE ECONOMIC EMPOWERMENT AND OTHER MEASURES FOR EQUITABLE ECONOMIC EMPOWERMENT

Pillars of equitable economic empowerment

13. Equitable economic empowerment must take place through strategies and measures which are based on the following pillars of equitable economic empowerment -

- (a) the ownership pillar, is aimed at promoting the equitable ownership of entities and productive assets in Namibia by empowerment beneficiaries, and this is measured through indicators, including but not limited to, the number or percentage of ownership rights held directly or indirectly by empowerment beneficiaries in entities and ownership of productive assets;
- (b) the management control and employment equity pillar is aimed at ensuring that the management structures and workforces of entities in Namibia more accurately reflect the overall demographics of the Namibian population in particular the empowerment beneficiary demographics, and this is measured through indicators, including but not limited to, the number or percentage of exercisable voting rights held by empowerment beneficiaries and the

number or percentage of economic empowerment beneficiaries on management, executive, middle management or senior level;

- (c) the human resources and skills development pillar is aimed at strengthening the skills and human resource base in Namibia, with an emphasis on measuring the extent to which employers carry out initiatives aimed at empowerment beneficiaries, and this is measured through indicators, including but not limited to, the expenditure on skills development for empowerment beneficiaries, support to and participation by empowerment beneficiaries in technical, academic and vocational learning programmes and participation by empowerment beneficiaries in internships and apprenticeship programmes;
- (d) the entrepreneurial development pillar is aimed at promoting sustainable access to the economy by empowerment beneficiaries and enhancing economic growth of entities owned by empowerment beneficiaries, and this is measured through indicators, including but not limited to, covering overhead costs, providing services at no or discounted cost, providing expertise and mentoring with the objective of contributing to the development, sustainability, financial and operational independence of empowerment beneficiaries;
- (e) the procurement pillar is aimed at growing development by promoting sourcing goods, works and services from empowerment beneficiaries, and this is measured through indicators, including but not limited to, expenditure on procurement of Namibian goods, works or services the extent to which entities of empowerment beneficiaries are intergrated into the value chains of entities;
- (e) the corporate social responsibility pillar is aimed at promoting the wellbeing and upliftment of empowerment beneficiaries with the aim of contributing towards socio-economic development of empowerment beneficiaries, and this is measured by indicators, including but not limited to, percentage spending on net profit after tax deductions in the form of monetary or non-monetary contributions aimed at improving the wellbeing of empowerment beneficiaries;
- (f) the value addition, technology and innovation pillar is aimed at promoting an export driven Namibian economy graduating from trading and extraction to manufacturing and value addition, and this is measured through indicators including but not limited to, supporting

programmes for innovation by empowerment beneficiaries, job creation for empowerment beneficiaries, transforming raw materials locally; and transferring skills to entities owned by empowerment beneficiaries; and

- (g) the empowerment financing pillar is aimed at promoting sustainable financing for the establishment of, and sustaining of, entities of empowerment beneficiaries and empowerment transactions, and this is measured through indicators, including but not limited to, investments, loans, grants, guarantees and incentives facilitating access to finance by entities of empowerment industrialists and entities of other empowerment beneficiaries.

Standards of equitable economic empowerment

14. (1) The Minister may by notice in the *Gazette* publish standards of equitable economic empowerment to give effect to the objects of this Act and the pillars of equitable economic empowerment.

- (2) The Minister may replace or amend the standards published in terms of subsection (1).

(3) Before publishing, replacing or amending standards of equitable economic empowerment in terms of subsection (1) or subsection (2), the Minister must -

- (a) publish the draft standards in the *Gazette* for comments;
- (b) give notice of the preparation of the draft standards in at least two newspapers circulating widely in Namibia; and
- (c) give interested persons not more than 60 days to comment on the draft standards.

(4) For the purpose of subregulation (3), the Minister may, in addition to the publication in the *Gazette*, publish a standard on a website or through any other means which the Minister considers appropriate.

(5) The standards prepared in terms of subsection (1) or (2), may be of a general application or may be specific.

(6) The standards prepared in terms of subsection (1) or (2) must specify the pillars of equitable economic empowerment which must be complied with and the weighting to be attached to a specific pillar.

(7) The standards prepared in terms of subsection (1) or (2), may include -

- (a) qualification criteria for purposes of procurement of goods, works or services;
- (b) qualification criteria for approval of licences, permits or authorisations in terms of a law or for engaging in certain economic activities;
- (c) indicators to measure compliance with a pillar of economic empowerment;
- (d) the weighting to be attached to indicators referred to in paragraph (c); and
- (e) guidelines for stakeholders in the various sectors of the economy to draw up sector transformation charters for equitable economic empowerment for their sector.

(8) A notice published under that subsection (1) or (2) may -

- (a) specify exemptions in respect of different classes of public entities, licences, permits, authorisations or economic activities;
- (b) differentiate between different categories of empowerment beneficiaries, such as male, female, persons with disabilities and different categories of entities;
- (c) specify the date on which a particular standard takes effect; and
- (d) specify the period of review of a particular standard.

(9) Every public entity must apply the relevant standard of equitable economic empowerment published in terms of this Act, in -

- (a) determining qualification criteria for the purpose of procurement of goods, works or services;
- (b) for the issuing of licences, permits or other authorisations in terms of a law or for engaging in an economic activity;
- (c) developing and implementing a procurement plan;
- (d) developing criteria for entering into partnerships with the private sector institutions; and
- (e) determining criteria for the awarding of incentives, grants, investment or entrepreneurial schemes in support of equitable economic empowerment aimed for different categories empowerment beneficiaries.

(10) If justifiable circumstances exist, the Minister, after consultation with the relevant public entity, may exempt a public entity from a requirement in subsection (9) and such an exemption must be specified in the notice published under subsection (1) or (2).

Sector transformation charters

15. (1) The Minister may by notice in the *Gazette* publish sector transformation charters in respect of the different sectors of the economy to give effect to the objects of this Act and the pillars of equitable economic empowerment.

- (2) The Minister may under subsection (1), publish -
 - (a) generic sector transformation charters which are of a general application; or
 - (b) specific sector transformation charters, which apply only to the specific sector of the economy.
- (3) The Minister may replace or amend the charters published in terms of subsection (1).
- (4) Before publishing, replacing or amending sector transformation charters in terms of subsection (1) or subsection (3), the Minister must -
 - (a) publish the draft charter in the *Gazette* for comments;

- (b) give notice of the preparation of the draft standards in at least two newspapers circulating widely in Namibia; and
- (c) give interested persons not more than 60 days to comment on the draft charters.

(5) For the purpose of subregulation (4), the Minister may, in addition to the publication in the *Gazette*, publish a draft charter in a newspaper, on a website or through any other means which the Minister considers appropriate.

(6) The sector transformation charters may include -

- (a) qualification criteria for purposes of procurement of goods, works or services;
- (b) indicators to measure compliance with a pillar of economic empowerment;
- (c) the weighting to be attached to indicators referred to in paragraph (c); or
- (d) any other matter necessary to promote the objects of this Act.

(7) Sector transformation charters published in the *Gazette* in terms of subsection (1) or (3) are binding between and among entities operating in the specific sector.

(8) An entity in a sector in respect of which the Minister has published a sector transformation charter in terms of subsection (1) or (3) may only be measured for compliance with the requirements of equitable economic empowerment in accordance with that charter.

(9) The various sectors in respect of which the Minister published a sector transformation charter must, after the commencement of the charter, annually report to the minister responsible for the sector on their compliance with the charter.

Accreditation and verification

16. (1) In accordance with the Public Service Act, 1995, the Minister may establish a unit within the Ministry to be an accreditation body to perform the function of accrediting individuals and institutions as verification officials and verification agencies for the purpose of this Act.

(2) The Minister may enter into an agreement with an institution to be an accreditation body to perform the function of accrediting individuals and institutions as verification officials and verification agencies for the purpose of this Act.

(3) The institution to be designated as an accreditation body under subsection (2) must comply with the prescribed requirements.

(4) The Minister must publish the agreement entered into under subsection (2) in the *Gazette*.

(5) Verification and rating for compliance with equitable economic empowerment for the purpose of this Act must only be conducted by verification officials and verification agencies accredited as contemplated in subsection (1) or (2).

(6) The Minister may -

- (a) prescribe the criteria for accrediting individuals as verification officials and institutions as verification agencies;
- (b) prescribe the revocation or suspension of accreditation as verification official or verification agency;
- (c) by notice in the *Gazette* publish standards for verification.

CHAPTER 4

FRONTING PRACTISE AND INVESTIGATIONS

Fronting practise

17. (1) For the purpose of this Act, "fronting practice" means a contractual arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objects of this Act, or the implementation of this Act or a provision of this Act, including practises related to empowerment transactions -

- (2) The indicators of fronting practises, include arrangements, acts or conduct -
 - (a) in terms of which empowerment beneficiaries who are appointed to entities are discouraged or inhibited from substantially participating in the main activities of that entity;
 - (b) in terms of which the economic benefits received as a result of equitable economic empowerment status of an entity do not flow to empowerment beneficiaries in the ratio specified in the relevant legal documents;
 - (c) involving the conclusion of a legal relationship with an empowerment beneficiary for the purpose of that entity achieving a certain level of equitable economic empowerment compliance without granting that beneficiary the economic benefits that would reasonably be expected to be associated with the status or position held by the beneficiary; or
 - (d) involving the conclusion of an arrangement with another entity in order to achieve or enhance equitable economic empowerment status in circumstances in which -
 - (i) there are significant limitations, whether express or implied, on the identity of suppliers, service providers, clients or customers;
 - (ii) the maintenance of operations of an entity is reasonably considered to be improbable, having regard to the resources available;
 - (iii) the terms and conditions were not negotiated at arm's length and on a fair and reasonable basis.

(3) A person who engages in a fronting practise commits an offence and on conviction is liable to a fine not exceeding N\$ 1 000 000 or to imprisonment for a period not exceeding 50 years or to both such fine and imprisonment.

Investigations

18. (1) The Commissioner may, on his or her initiative or on the lodging of a complaint in the prescribed manner, conduct investigations with respect to an activity prohibited by this Act or relating to empowerment transactions, or for the purposes of doing anything required or permitted to be done under this Act.

(2) An investigator at the direction of the Commissioner must conduct investigations with respect to an activity prohibited by this Act or relating to empowerment transactions, or for the purposes of doing

anything required or permitted to be done under this Act.

(3) After an investigation in terms of this Act, the Commissioner may make a finding as to whether empowerment transaction involves a fronting practice.

(4) If the Commissioner is of the view that any matter investigated in terms of this Act may involve the commission of a criminal offence in terms of this Act or any other law, it must refer the matter to the Prosecutor-General.

(5) When performing the investigative functions under this Act, the Commissioner or an investigator has, subject to such necessary changes as may be required by context, the same powers, privileges and immunities as those conferred on the Ombudsman by section 4 of the Ombudsman Act, 1990 (Act No. 7 of 1990) and the provisions of that section do apply to an investigation under this Act as if it were an inquiry or investigation conducted by the Ombudsman under that Act.

CHAPTER 5 GENERAL PROVISIONS

Access to information

19. The Commissioner may request a person employed in or associated with a public entity to furnish the Commissioner with all information that may reasonably be required for an investigation in terms of this Act and such person must furnish the Commissioner with such information and permit the Commissioner to have access to any registers, records, documents, and electronic data, which may contain such information.

Confidentiality

20. (1) The Commissioner, an investigator, a person appointed or a staff member seconded or transferred under Public Service Act, 1995 in terms of this Act, to assist the Commissioner in the exercise or performance of the Commissioners powers or functions or any other person contracted to do work in terms of this Act, may not disclose to any other person confidential information, which the person has obtained in the exercise or performance of his or her powers or functions under or in terms of this Act, except if the disclosure of such information -

- (a) is required for the purpose of the exercise or performance of his or her powers or functions under or in terms of this Act or any other law; or
- (b) is required by order of a court of law.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 25 years, or to both such fine and such imprisonment.

Reporting on compliance

21. Every public entity must report annually on their compliance with equitable economic empowerment and the report must be submitted to the Commissioner.

Directives by Minister

22. (1) The Minister may in writing issue a directive to the Commissioner, public entities or private sector institutions to provide the Minister -

- (a) with the information, reports or statistical returns specified in the directive, at the time or at the intervals specified in the directive; or
- (b) with any document in its possession or custody or under its control, within the period specified in the directive;
- (c) perform acts necessary to meet obligations imposed by this Act.

(2) After having considered the directive under subsection (1), the Commissioner, public entity or private sector institution must give effect to the directive.

Offences and penalties

23. (1) A person commits an offence, if that person -

- (a) not being the Commissioner, an investigator or a person appointed, or seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner in the exercise of his or

her powers or functions, or an accredited body, verification agency or verification official, falsely represents himself or herself to be such person or body;

- (b) obstructs or improperly attempts to influence the Commissioner, an investigator or a person appointed, or seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner is the exercise of his or her powers or functions, or an accredited body, verification official or verification agency, when such person or body is exercising powers or performing functions in terms of this Act;
 - (c) does anything calculated to improperly influence the Commissioner, an investigator or a person appointed, or seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner is the exercise of his or her powers or functions, or an accredited body, verification official or verification agency, concerning any matter connected with an investigation in terms of this Act;
 - (d) knowingly provides false information to the Commissioner, an investigator or a person appointed, seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner in the exercise of his or her powers or functions, or an accredited body, verification official or verification agency, in the exercise powers or functions in terms of this Act;
 - (e) anticipates any findings of the Commissioner or an investigator in a way that is calculated to improperly influence the investigation or findings; and
 - (f) does anything in connection with an investigation in terms of this Act that would have been contempt of court if the proceedings had occurred in a court of law; or
- (2) A person commits an offence if that person knowingly -
- (a) misrepresents or attempts to misrepresent the equitable economic empowerment status of an entity; or

- (b) provides false information or misrepresents information to an accredited body, verification official or verification agency, to secure a particular equitable economic empowerment status or any benefit associated with the compliance with this Act.

(3) A person convicted of an offence in terms of subsection (1) or (2) is liable to fine not exceeding N\$ 500 000 00 or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

Delegation of powers and assignment of functions

24. (1) The Minister may delegate or assign his or her powers or functions in terms of this Act to the Commissioner.

(2) The Commissioner may delegate or assign his or her powers or functions in terms of this Act to the investigator, or a person appointed, or seconded or transferred in terms of the Public Service Act, 1995 to assist the Commissioner in the exercise or performance of his or her powers or functions in terms of this Act.

(3) The functionary authorised to delegate or assign a power or function in terms of this section, may not delegate or assign a power or function, to -

- (a) publish a notice in the *Gazette*;
- (b) issue directives or guidelines;
- (b) to make regulations or to publish standards of equitable economic empowerment or sector transformation charters; or
- (c) give exemptions,

in terms of this Act.

(4) A delegation or assignment referred to in subsection (1) or (2) -

- (a) must be in writing;

- (b) may be made subject to conditions;
- (c) may be withdrawn or amended in writing by the functionary;
- (d) does not prevent the functionary from exercising that power or performing that function; and
- (e) does not divest the functionary of the responsibility regarding the exercise of the delegated power or the performance of the assigned function.

Regulations

25. (1) The Minister may, by notice in the *Gazette*, make regulations relating to -

- (a) any matter that may be prescribed in terms of this Act;
 - (b) the conducting of investigations in terms of section 18 of the Act;
 - (c) the findings of an investigation under section 18(3) of the Act;
 - (d) reporting on compliance with this Act; and
 - (e) information that a person is required to provide in terms of this Act.
- (2) Regulations made under subsection (1) may -
- (a) create an offence for any contravention of a regulation or a failure to comply with a provision of a regulation; and
 - (b) prescribe penalties in respect of an offence contemplated in paragraph (a) not exceeding a fine of N\$ 60 000 or imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Administration of Act

26. (1) The President may by proclamation in the *Gazette* -

- (a) assign the administration of this Act to any Minister;
- (b) determine which Ministry is charged with the administration of this Act.

(2) The President may in the proclamation referred to in subsection (1) -

- (a) determine that different provisions of this Act are administered by different Ministers; and
- (b) determine that any power granted by this Act must be exercised by one Minister after consultation or with the concurrence of one or more other Ministers.

Amendment of laws

27. The laws set out in column 1 of the Schedule are amended to the extent indicated in the third column of that Schedule.

Short title and commencement

28. (1) This Act is called National Equitable Economic Empowerment Act, 2019 and comes 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.

**SCHEDULE
LAWS AMENDED**

No. and year of law	Short title	Extent of amendment
Act No. 26 of 1991	Racial Discrimination Prohibition Act, 1991	<p>The amendment of section 7 by the addition of the following subsection after subsection (3):</p> <p>“(4) The provisions of subsection (1) does not prohibit equitable economic empowerment policies and practices consistent with the provisions of the National Equitable economic empowerment Act, 20....”.</p>
Act No. 15 of 2015	Public Procurement Act 15 of 2015	<p>The amendment of -</p> <p>(a) Section 1 by the addition of the following definition after the definition “electronic reverse auction”:</p> <p>“empowerment beneficiary” means empowerment beneficiary as defined by section 1 of the National Equitable Economic Empowerment Act, 20....”</p> <p>(b) section 3 by the addition of the following subsection:</p> <p>“(3) The provisions in this Act do not prohibit equitable economic empowerment policies and practices consistent with the provisions of the National Equitable Economic Empowerment Act, 20....”.</p> <p>(c) section 50 by the addition of the following paragraph in subsection 2:</p> <p>“(e) is not, as required by the National Equitable Economic Empowerment Act, 20....., in</p>

possession of -

(i) a valid National Equitable Economic Empowerment compliance certificate issued in terms of National Equitable Economic Empowerment Act, 20.....;

(ii) a valid compliance certificate as provided for in a recognised sector transformation charter”.”

(d) section 71 by the substitution of subsection (1) for the following subsection:

“(1) The Board or public entity has the right in this Part to limit participation in procurement proceedings in accordance with the provisions of the National Equitable Economic Empowerment Act, 20....”.”

(e) section 72 by the substitution of subsection (1) for the following subsection:

“(1) The Minister may prescribe any nature of procurement supporting Government empowerment programmes or initiatives made in accordance with the National Equitable Economic Empowerment Act, 20....to be reserved exclusively for categories of local suppliers or empowerment beneficiaries and which is to be complied with by the Board and every public entity in the procurement of goods, work or services.”.