



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 223

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 70

1991

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 9 of 1991: Namibian Broadcasting Act, 1991.

ACT

To provide for the establishment of a broadcasting corporation for Namibia; its objectives, powers, duties and functions; and to provide for matters incidental thereto.

(Signed by the President on 7 June 1991)

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

Definitions.

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

“board” means the Board of the Namibian Broadcasting Corporation referred to in section 5;

“broadcasting service” means a telecommunications service of transmissions carried on in Namibia consisting of sounds, images, signs or signals which take place by means of radio or of cables or wires as contemplated in section 4(1)(c) and is intended for reception by the general public or by any category of persons in a particular area or at a particular place and, includes, for the purposes of section 12, any such telecommunication service of transmissions carried on or from any place outside Namibia and received in Namibia by means of a television set;

“Corporation” means the Namibian Broadcasting Corporation established by section 2;

“licensing year” means the period from 1 October in any year to 30 September in the next ensuing year;

“member” means a member of the board appointed under section 6(2);

“Minister” means the Minister of Information and Broadcasting;

“radio” means electromagnetic waves of frequencies lower than 3 000 GHz transmitted in space without an artificial conductor;

“radio dealer” means the holder of a radio dealer’s registration certificate issued under section 7 of the Radio Act, 1952 (Act 3 of 1952);

“regulation” means any regulation made under section 27;

“television licence” means any licence issued under section 16;

“television set” means a device which is, alone or in combination with any other device, capable of receiving by means of radio or cables or wires as contemplated in section 4(1)(c) transmissions broadcast in a broadcasting service and reproducing them in the form of images or other visible signals, with or without accompanying sounds.

Establishment of Corporation.

2. (1) There is hereby established a broadcasting corporation to be known as the Namibian Broadcasting Corporation.

(2) The Corporation shall be a juristic person.

Objectives of Corporation.

3. The objectives of the Corporation shall be to carry on a broadcasting service in order to -

- (a) inform and entertain the public of Namibia;
- (b) to contribute to the education and unity of the nation, and to peace in Namibia;
- (c) to provide and disseminate information relevant to the socio-economic development of Namibia;
- (d) to promote the use and understanding of the English language.

Powers, duties and functions of Corporation.

4. (1) In order to achieve its objectives the Corporation shall be competent -

- (a) subject to the provisions of the Radio Act, 1952 (Act 3 of 1952), the Post Office Act, 1958 (Act 44 of 1958), or any other law and subject to the provisions of section 34(3) of this Act, to carry on alone or, with the approval in writing of the Minister previously obtained in every particular

case and subject to such conditions as may be determined by him or her, in co-operation with any other person, a broadcasting service in Namibia;

- (b) at the request of the Minister and subject to such conditions as may be determined by him or her, to broadcast alone or, with the approval in writing of the Minister previously obtained in every particular case and subject to such conditions as may be determined by him or her, in co-operation with any other person, programmes, information or news for reception in any country outside Namibia;
- (c) to acquire or erect within or, with the approval in writing of the Minister previously obtained in every particular case, outside Namibia broadcasting stations and any installations and facilities in connection therewith and acquire any equipment therefor or rights in connection therewith;
- (d) subject to the provisions of section 16, to issue licences in respect of the possession, use or making available of television sets;
- (e) with the approval in writing of the Minister, to enter into agreements with -
 - (i) any government, body or person in relation to the supplying of programmes, information or news to the Corporation by such government, body or person for presentation by the Corporation by way of re-transmission or otherwise;
 - (ii) the government of a country referred to in paragraph (b) or any organisation in such country in relation to the broadcasting and reception of programmes, information or news so referred to;
- (f) to canvass advertisements and broadcast at such tariffs as may be determined by the Corporation such advertisements by means of radio or television, or to publish or distribute in any other manner such advertisements;

- (g) to establish orchestras, bands and choirs, engage artists and performers and organise or subsidise public concerts, lectures, performances and entertainments;
- (h) to acquire copyrights, performer's rights and other rights;
- (i) to compile, print, produce, publish or distribute any literary matter relating to broadcasting;
- (j) to make, compile, print, manufacture, buy, hire or acquire by any other means sound, visual or audio-visual recordings, fixations and material of whatever nature or description, and to sell, lease, deal in or in any other manner dispose of such recordings, fixations and materials, whether or not it was broadcast by the Corporation;
- (k) subject to the provisions of section 19, to raise monies by way of loans;
- (l) to acquire, sell, mortgage or in any other manner alienate any movable property, whether corporeal or incorporeal or, with the approval in writing of the Minister, any immovable property, including any right in or over property;
- (m) subject to the provisions of section 21, to expropriate any movable property, whether corporeal or incorporeal or, immovable property, including any right in or over property, or to take the right to use temporarily any property;
- (n) to erect buildings;
- (o) subject to the provisions of subsection (2) and with the approval of the Minister given after consultation with the Postmaster-General, to form and incorporate or establish, and to manage and control a company for the purposes of a broadcasting service, the shares of which may also be held by persons other than the Corporation or any body of persons, incorporated or unincorporated to such an extent that such body or persons do not manage or control such company;

- (p) to manufacture or produce films, gramophone or other mechanical recordings, materials and equipment for use in connection with a broadcasting service;
- (q) to provide any person with or receive from such person, programmes, information, news or other material for purposes of a broadcasting service.
- (r) to exercise any other power which is incidental to, or is in its opinion necessary for and conducive to, the achievement of its objectives.

(2) The approval referred to in paragraph (o) of subsection (1) may be given subject to such terms and conditions as may be determined by the Minister, and may include terms and conditions relating to -

- (a) the content of programmes to be broadcasted in a broadcasting service;
- (b) the duty of the company to correct information erroneously broadcasted in a broadcasting service;
- (c) the protection of the privacy of the individual in a broadcasting service;
- (d) the duty of the company to broadcast information in a broadcasting service to the public if so requested by a public authority established by or under any law;
- (e) any steps which may be taken by the Minister against the company referred to in that paragraph, in the event such company contravenes or fails to comply with any of such terms and conditions.

(3) The provisions of this section shall not be construed as conferring upon any person any rights or powers which the Corporation has in terms of this Act or any other law.

Board of Corporation.

5. The affairs of the Corporation shall, subject to the provisions of this Act, be managed and controlled by a board to be known as the Board of the Namibian Broadcasting Corporation.

Constitution of Board.

6. (1) The board shall consist, subject to the provisions of section 13(1)(a), of not more than 11 and not less than 6 members appointed, subject to the provisions of subsections (2) and (3), by the Minister.

(2) An appointment of a member shall be made in such a manner that the board shall consist of persons having knowledge of, or experience in the administration or management of public affairs and the political, socio-economic and communication field, but shall not be a person -

(a) who is not a Namibian citizen;

(b) who is a member of the National Assembly.

(3) The Minister shall designate one of the members referred to in subsection (2) as chairperson of the board and the members shall elect from amongst themselves the vice-chairperson of the board;

(4) When the chairperson of the board is absent or unable to perform his or her powers, duties and functions, the vice-chairperson of the board shall act in his or her stead and, when so acting, the vice-chairperson may exercise or perform any power, duty or function of the chairperson.

(5) Every appointment of a member shall be notified in the *Gazette*.

Committees of Board.

7. (1) The board may from time to time establish committees to advise or assist it in the exercise of any of its powers or the performance of any of its duties or functions;

(2) A committee established under subsection (1) -

(a) shall consist of such members or other persons appointed by the board as the board may deem fit, to be members of the committee;

(b) shall meet at such times and places as may be determined by the board.

(3) A member of a committee established under subsection (1) who is not a member of the board or is not in the full-time employ of the Corporation shall be paid from

the funds of the Corporation such allowances and, in respect of a journey undertaken for the purposes of the business of the committee, such subsistence and travelling allowances and such reasonable losses suffered by him or her because he or she was engaged in the business of the board as may be determined by the board from time to time.

Tenure of office of members and filling of vacancy.

8. (1) A member shall, subject to the provisions of subsection (2), hold office for a period of 5 years but shall at the expiration of his or her period of office be eligible for re-appointment.

(2) A member shall vacate his or her office if -

- (a) his or her estate is sequestrated or he or she compromises with his or her creditors;
- (b) he or she is according to the laws detained as a mentally ill person;
- (c) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (d) he or she, upon giving not less than one month's notice in writing to the Minister, resigns from his or her office as a member;
- (e) he or she has absented himself or herself from three consecutive meetings of the board without the leave of the chairperson of the board;
- (f) he or she becomes subject to a disqualification as contemplated in section 6(2);
- (g) he or she is removed from his or her office in terms of subsection (3).

(3) The Minister may remove a member from office -

- (a) on account of continued ill-health;
- (b) on account of misconduct;
- (c) on account of unfitness for the duties of his or her office or incapacity to carry them out efficiently;

- (d) if, for reasons other than his or her own unfitness or incapacity, his or her removal will promote efficiency.

(4) Any casual vacancy on the board caused by the death or the vacation of office of any member shall, with due regard to the provisions of section 6(2), be filled for the unexpired portion of the period of office of the member who has died or has vacated his or her office, as the case may be.

Remuneration and other conditions of appointment of members.

9. (1) A member -

- (a) shall be paid by the Corporation from the funds of the Corporation such remuneration as may be determined by the Minister from time to time;
- (b) may be paid such allowances and, in respect of a journey undertaken for purposes of the business of the board, such subsistence and travelling allowances and such reasonable losses suffered by him or her because he or she was engaged in the business of the board as may be determined by the Minister from time to time.

(2) The remuneration and allowances and further rights, privileges or benefits determined under subsection (1) may differ according to the office held by the member concerned and the functions performed by him or her.

Duty of member to disclose interest in certain companies or firms.

10. (1) A member shall, subject to the provisions of subsection (2), submit to the Minister a statement in writing of any directorship, office, post, shareholding or other financial interest, directly or indirectly, held or acquired by such a member or the member's spouse in a company or firm which carries on broadcasting services or deals in receivers or manufactures, assembles, imports or sells apparatus or equipment for use in broadcasting services.

(2) A statement referred to in subsection (1) shall be so submitted to the Minister -

- (a) in the case of a member who so holds any interest referred to in that subsection at the date of his or her appointment in office as such a member, within a period of 7 days after his or her appointment in office as such a member;

- (b) in the case of a member who so acquires any such interest at any time during his or her tenure of office as such a member, within a period of 7 days after the acquisition of such interest.

Duty of member to disclose interest in certain contracts.

11. (1) The provisions of sections 234(1), (2), (3) and (5), 235 and 237(1) and (4) of the Companies Act, 1973 (Act 61 of 1973), shall subject to the provisions of subsections (2) and (3) of this section, apply *mutatis mutandis* in respect of a member of the board and in such application, unless the context indicates otherwise, any reference therein to a company, a director, or official of a company shall be construed as a reference to the Corporation, a member or an officer or employee of the Corporation, as the case may be.

(2) A member who has made a declaration of interest in terms of subsection (1) in respect of a contract which has been or is to be entered into by the Corporation as contemplated in section 234 of the said Companies Act, 1973, as applied by that subsection, shall not, unless the board otherwise directs, take part in any consideration or discussion of, or exercise any vote on, any question relating to such interest.

(3) Any reference to an interest in a contract contemplated in the relevant provisions of the Companies Act, 1973, as applied by subsection (1), shall be deemed to include any interest which the spouse of a member of the board or an officer or employee of the Corporation, as the case may be, has in a contract referred to in section 234(2) of the said Companies Act, 1973, as applied by the said subsection (1).

(4) Any member of the board or an officer or employee of the Corporation who fails to comply with a provision of the Companies Act, 1973, as applied by subsection (1), shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Meetings of Board.

12. (1) A meeting of the board shall be held at such time and place as may be determined by the chairperson: Provided that the chairperson shall at the request of the Minister or on the reasoned request in writing of at least one-third of the members convene a special meeting of the board.

(2) The majority of the members of the board shall form a quorum for a meeting of the board.

(3) The chairperson of the board or, in his or her absence, the vice-chairperson of the board shall preside at all the meetings of the board at which he or she is present.

(4) When the chairperson of the board and the vice-chairperson of the board are absent from a meeting of the board, the members present shall elect a chairperson from among their number to act as chairperson at that meeting, and while he or she so acts he or she shall perform all the duties and functions of the chairperson.

(5) The decision of a majority of the members present at the meeting of the board shall be a decision of the board: Provided that in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the board or act performed under the authority of the board shall be invalid by reason only of a vacancy on the board, or by reason only of the fact that any person who is not entitled to sit as a member when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members who were present at the time and entitled to sit as members.

(7) The board shall cause a record to be kept of the proceedings of the meetings of the board.

(8) The board may make rules in relation to the holding of, and procedures at, meetings of the board or any committee of the board.

Appointment of Director-General, and other officers and employees.

13. (1) The board -

- (a) shall appoint a Director-General as chief executive officer of the Corporation who shall, in addition to the members contemplated in section 6(1), be a member of the board and be entitled to participate in the deliberations of the board, but shall not be entitled to exercise any vote at any meeting of the board;

- (b) may appoint such other officers and employees as it may deem necessary for the achievement of its objectives;
 - (c) may determine the duties and functions of its officers and employees, and their salaries, wages, allowances or other remuneration or conditions of employment, including the establishment or support on such terms and conditions as may be determined by it of -
 - (i) a housing fund for the provision of housing to its officers and employees;
 - (ii) associations or institutions for the promotion of the interests of its officers and employees;
 - (iii) aid funds for the rendering of assistance to its officers and employees or their dependants;
 - (iv) a bursary fund to finance or assist in financing the interests of the Corporation, the training or further training of existing or prospective officers and employees of the Corporation.
 - (d) may provide for its officers and employees and their dependants by means of insurance with an insurance company or a pension or pension fund or in any other manner, pecuniary benefits upon retirement or termination of service or at any other time;
 - (e) shall, in the appointment or promotion of officers or employees of the Corporation have special regard to the balanced structuring thereof.
- (2) (a) The Minister may, from time to time declare by notice in writing to the board any office or post on the establishment of the Corporation to be an office or post which no person shall be appointed in or promoted to except upon the recommendation of the Public Service Commission, and the Minister may at any time withdraw in a like manner such declaration.

- (b) The board shall not appoint or promote any person in or to any office or post referred to in paragraph (a) without a recommendation as contemplated in that paragraph.

(3) Subject to the directions of the board and the provisions of this Act, the Director-General shall -

- (a) exercise control and supervision over the other officers and employees of the Corporation;
- (b) exercise or perform the powers, duties and functions assigned to him or her by the board.

Limitation of liability.

14. No compensation shall be payable by any member of the board or officer or employee of the Corporation employed in carrying out the provisions of this Act in respect of any act done in good faith under this Act.

Powers of employees of Corporation to maintain order upon property and agreement to render security services.

15. (1) The Director-General may, by notice in writing, authorise any officer or employee of the Corporation to maintain order in or on any property occupied by the Corporation and such officer or employee may arrest any person who is reasonably suspected of having committed any offence under the common law or any statutory provision in or on that property.

(2) The person who makes the arrest shall as soon as possible turn over the person arrested or cause him or her to be turned over to any member of the Namibian Police Force established under section 2 of the Police Act, 1990 (Act 19 of 1990), to be dealt with according to law.

(3) The Corporation may, by agreement, appoint any person, body or organisation to render security services for the safe-guarding of the property of the Corporation or any thing held by it in custody, and the said person, body or organisation shall, in the rendering of such services to the Corporation, in addition to the powers conferred upon him or her or it by or under any other law, be vested with the powers referred to in subsections (1) and (2) of this section.

(4) The compensation payable by the Corporation for the services referred to in subsection (3) shall be determined by agreement.

Use of television sets and issue against payment of television licences by Corporation in respect of possession or use of television sets.

16. (1) (a) No person shall use any television set for the reception of anything broadcast in a broadcasting service, unless he or she -
- (i) is in possession of a licence issued under subsection (3)(a); or
 - (ii) is entitled to so use a television set by virtue of an exemption granted by or under any regulation; or
 - (iii) is entitled to so use a television set by virtue of any permission granted under a licence issued under subsection (3)(b); or
 - (iv) is a person to whom such television set has been hired out or in any other manner been made available in accordance with a licence issued under subsection (3)(c), and such television set is so used in accordance with the conditions subject to which such licence or exemption has been issued or granted.
- (b) No owner or manager of any business or institution shall in connection with that business or institution use or grant permission to any other person to use any television set for the reception of anything broadcast in a broadcasting service, unless he or she is in possession of a licence issued under subsection (3)(b) or (c) and such television set is so used in accordance with the conditions subject to which such licence has been issued.
- (c) No person shall have in his or her possession any television set unless he or she -
- (i) has such television set in his or her possession at a place where, and in circumstances in which, he or she, by virtue of an exemption granted by or under any regulation, is entitled to use it for the reception of broadcasts in a broadcasting service;
 - (ii) he or she is a person to whom such television set is hired out or in any other manner made available by a radio dealer under a television licence issued to that radio dealer under subsection (3)(c).

(d) No radio dealer shall sell, give or in any manner supply any television set to any person, or effect any repairs to any television set for any person, unless that person is, in terms of this section, entitled to have in his or her possession, or to use, that television set.

(2) The provisions of subsection (1) shall not apply in relation to any person who manufactures television sets as a business or who acts in the execution of his or her duties in the service of such a person, in so far as he or she is in possession of, or uses, any television set manufactured by him or her, to receive, for the purposes of testing such television set in or on the premises where it is manufactured or on any other premises approved by the Corporation, anything broadcast in a broadcasting service.

(3) The Corporation shall, upon an application complying with such requirements as may be determined by the Corporation or prescribed by regulation, made by any person who, in respect of his or her use of any television set, is, in terms of subsection (1), required to be in possession of a licence, issue, on such conditions, if any, and on payment of such fees as may be prescribed by regulation or, if the period for which a licence is applied for commences on a date after the commencement of the licensing year, a pro rata part of such fees -

(a) a licence conferring upon the holder thereof the right to use a television set or, if at any time so prescribed by regulation, a number of television sets specified in the licence during a particular licensing year -

(i) at a place specified in the licence; or

(ii) at any other place in respect of which, after the issue of such licence, notice has been given to the Corporation under such circumstances, in the manner and at the time as may be prescribed by regulation;

to receive anything broadcast in a broadcasting service;

(b) a licence conferring on the holder thereof, in his or her capacity as the owner or manager of a

business or institution, the right to use in connection with that business or institution a television set or, if at any time so prescribed by regulation, a number of television sets specified in the licence, or grant permission to any other person to use, in connection with that business or institution any television set or such television sets during a particular licensing year -

- (i) at a place specified in the licence; or
- (ii) at any other place in respect of which, after the issue of such licence, notice has been given to the Corporation under such circumstances, in such manner and at such time as may be prescribed by regulation; or
- (iii) in any vehicle, vessel or aircraft used in connection with the carrying on of that business or institution,

to receive anything broadcast in a broadcasting service;

- (c) a licence conferring on the holder thereof, in his or her capacity as a radio dealer, the right during a particular licensing year -
 - (i) to hire out a television set or, if at any time so prescribed by regulation, a number of television sets specified in the licence, for a period expiring not later than the end of that licensing year, to any person for use by that person, to receive anything broadcast in a broadcasting service, even if that person is not in possession of a licence issued under this section;
 - (ii) to use any such television set or television sets which he or she has in his or her possession in connection with his or her business as a radio dealer to receive, for the purposes of demonstrating such television set or television sets to the prospective buyer or hirer, anything broadcast in a broadcasting service;
 - (iii) to make available, for use by a prospective buyer or hirer, any such television set or

television sets which he or she has in his or her possession in connection with his or her business as a radio dealer, to receive, for the purpose of demonstrating such television set or television sets to such prospective buyer or hirer for a period in that licensing year not exceeding 14 days, anything broadcast in a broadcasting service, even if such prospective buyer or hirer is not in possession of a licence issued under this section.

(4) Any person who fails to take out a licence referred to in this section on or before the date of commencement of the licensing year or the later date on which he or she is in terms of this section required to be in possession of a licence, shall, in addition to the fees prescribed by regulation in respect of such licence, by way of a penalty, pay to the Corporation in respect of every month or part of a month during which he or she, as from that date, failed to take out such licence, an amount equal to 10 per cent of such licence fees: Provided that the total amount of the penalty shall not exceed the amount of such licence fees: Provided further that no penalty shall be payable in respect of the first month of the licensing year if such person already had such a licence at the end of the previous licensing year and the licence in respect of the new licensing year is taken out by him or her not later than the end of the first month of the new licensing year.

(5) Any person, except a radio dealer, who sells, gives or in any other manner supplies any television set to any person other than a radio dealer, shall within 14 days after such television set is delivered to such other person, notify the Corporation in writing of -

- (a) the name and address of such person;
- (b) the date on which such television set was delivered; and
- (c) the number of the licence under which such first-mentioned person was in possession of that television set.

Permit for possession of television set.

17. The Corporation may issue to any person a permit for a period specified in such permit to have in his or her possession any television set on condition that such television set is not during that period used for the purpose

of receiving anything broadcast in a broadcasting service, and may in its discretion seal that television set free of charge in order to prevent the use thereof for such purpose.

Inspectors.

18. (1) Any person authorised thereto by the Corporation in writing, may at any reasonable time -

- (a) require any person who is required to be in possession of a television licence, to produce such licence to him or her for inspection;
 - (b) require any person who has the possession or custody of a television set, or the owner, occupier or person in control of any premises in or on which there is any television set, to produce such television set to him or her for examination or to furnish such information as he or she may be able to furnish and which may be necessary in order to ascertain whether the provisions of this Act have been complied with in relation to that television set;
 - (c) require any radio dealer to produce to him or her for inspection the documents kept by him or her in terms of section 12(2) of the Radio Act, 1952 (Act 3 of 1952), or by virtue of an authorisation under section 26(2) of this Act and inspect such documents and make extracts therefrom or copies thereof;
 - (d) enter upon any land in so far as it may be necessary in order to exercise any power conferred upon him or her under this section.
- (2) (a) Any person referred to in subsection (1) who exercise any powers or carries out any functions under this section shall, on demand by any person, produce for inspection his or her written authorisation referred to in that subsection.
- (b) The Corporation may from time to time authorise any member of the Namibian Police Force established under section 2 of the Police Act, 1990 (Act 19 of 1990), to assist the Corporation in the exercise of any power or the carrying out of any function under this section.

Loans by Corporation.

19. (1) The Corporation may -

- (a) with the approval of the board raise moneys at any time by way of loans repayable within a period not longer than 5 years by overdrawing its account with a bank or in any other manner, to meet any casual deficits that may arise from time to time;
- (b) with the approval in writing of the Minister previously obtained in every particular case, raise moneys by way of any other loan in such an amount as may be authorised by the Minister.

(2) When approval is granted to the Corporation under paragraph (b) of subsection (1) to raise a loan, the Corporation may raise such loan on such conditions and in such manner as may be determined by the Minister by stock or debentures issued in Namibia.

(3) Every loan contemplated in paragraph (b) of subsection (1) and any interest or other charges due in respect of such loan, shall be a first charge on all the revenues and assets of the Corporation and on all fees and charges received or to be received by it.

Funds of Corporation.

20. (1) Subject to the provisions of section 34(6), the Corporation shall maintain -

- (a) a general fund into which shall be paid all moneys appropriated by law for the benefit of the Corporation and all other moneys received by the Corporation, and from which all payments by the Corporation for which no provision is made by means of the depreciation fund or the redemption fund shall be made;
- (b) a depreciation fund into which an amount determined by the board shall be paid from the general fund at the end of each financial year of the Corporation and which shall be utilised for the defrayment of costs in respect of the replacement of any obsolete plant or equipment and of exceptional repairs to, or the improvement of, any plant or equipment used by the Corporation, but which shall not be utilised to defray the costs of the ordinary maintenance of any such plant or equipment;

(c) a redemption fund into which shall be paid all interest derived from the investment of moneys in terms of subsection (2) in equal annual payments determined by the board which shall be a sum not less than a sum as will, with accumulations in the way of compound interest at the rate of 10 per cent per annum, be sufficient to redeem any loan raised under section 19(1)(b) within the period of such a loan, and from which shall be paid all amounts necessary in respect of the redemption of any such loan.

(2) Notwithstanding the provisions of subsection (1), the Corporation may -

(a) invest, with such financial institution as may be approved by the Minister, any moneys in the depreciation fund and the redemption fund which are not required for immediate use or as a reasonable working balance;

(b) transfer any moneys in the depreciation fund to the general fund, with the approval in writing of the Minister previously obtained in every particular case and subject to such conditions as may be determined by him or her, which may include a condition regarding the repayment of such moneys into the depreciation fund and the period within which and the manner in which such moneys shall so be repaid;

(c) repay any amount transferred under paragraph (b) from the general fund into the depreciation fund.

Accounts.

21. (1) The Corporation shall keep proper account of all moneys received or expended by it and of all its assets, liabilities and financial transactions.

(2) The provisions of Chapter XI of, and of Schedule 4 to, the Companies Act, 1973 (Act 61 of 1973), except sections 285, 302, 306 and 310 and the provisions in connection with offences, shall apply *mutatis mutandis* and subject to the provisions of subsection (3) of this section, to the Corporation as if it were a public company with a share capital and as if a corporate body established by the Corporation under section 4(1)(o) of this Act were a subsidiary of which the Corporation is a holding company.

(3) For the purposes of subsection (2) any reference in the relevant provisions of the Companies Act, 1973 -

- (a) to an obligation to lay annual financial statements and reports before an annual general meeting of the company or to send it to members or holders of debentures of a company or to the Registrar of Companies, shall be construed as a reference to an obligation to lay such statements and reports before the Minister within 6 months after the end of each financial year of the Corporation or within such further period as the Minister may allow, or to send it to the Minister, as the case may be;
- (b) to the Registrar of Companies or a member of a company, shall be construed as a reference to the Minister;
- (c) to the registered office of a company, shall be construed as a reference to the head office of the Corporation;
- (d) to that Act, shall be construed as a reference to the relevant provisions thereof as applied by this section;
- (e) in the case of section 284(3), to the territory of South West Africa, shall be construed as a reference to Namibia,

and section 226 of the Companies Act, 1973, shall for the purposes of section 295 thereof as applied by this section, be deemed to apply *mutatis mutandis* to the Corporation.

(4) The financial year of the Corporation shall end on the last day of March in each year.

Auditing.

22. (1) The Corporation shall cause its books and accounts to be audited by the Auditor-General or any competent person employed in his or her office designated by the Auditor-General for such purpose.

(2) The board shall produce and lay before the Auditor-General all books and accounts of the Corporation with all vouchers in support thereof, and all books, papers and writings relating thereto which are in its possession or control.

(3) For the purposes of the audit, the Auditor-General or such person designated by him or her in terms of subsection (1), may hear and receive evidence upon oath (which he or she is hereby empowered to administer) or affirmation, and may by written notice under his or her hand, require any person to appear before him or her in person at a time and place specified in such notice, to give information or produce books or documents necessary for the audit.

(4) Any person appearing in terms of such notice shall be paid such witness fees and allowances as he or she would have been entitled to, had he or she been appearing at a magistrate's court as a witness.

(5) The Auditor-General or such designated person -

(a) shall disallow any payments made without proper authority according to law, and report the disallowance to the board;

(b) shall charge against the person who made or authorised the payment in question, so much of that payment as is not condoned by the board;

(c) shall charge against the person responsible therefor -

(i) so much of the amount of any deficiency or loss arising from negligence or misconduct of that person as is not condoned by the board, if any; or

(ii) so much of any amount which ought to have been but was not brought into account by that person as is not condoned by the board, if any: Provided that no amount shall be condoned where such deficiency or loss is a result of theft or fraud by that person;

(d) shall certify in every case that the amount so charged is correct.

(6) Any amount so charged and certified by the Auditor-General or such designated person shall be paid by that person against whom it has been charged to the Corporation within 14 days after it was so certified, and, if

not so paid, may be recovered from that person as a debt by the Corporation.

(7) It shall be the duty of the Auditor-General or such designated person, in addition to his or her ordinary duties to audit the books and accounts of the Corporation, to certify not less than once in every year -

(a) whether or not, in his or her opinion -

- (i) the accounts of the Corporation are in order;
- (ii) such accounts present a true and correct view of the financial position of the Corporation and of its transactions;
- (iii) due provision has been made for the redemption and repayment of the loans raised by the Corporation;
- (iv) the value of the assets of the Corporation has been correctly stated; and

(b) whether or not -

- (i) the amounts to be paid into the general fund and the depreciation fund have been so paid;
- (ii) all his or her requirements and recommendations as auditor have been complied with and carried out.

Expropriation of land by Corporation.

23. (1) Notwithstanding anything to the contrary contained in any law, the Corporation may, with the approval in writing of the Minister previously obtained in every particular case and subject to such conditions as may be determined by him or her and to the obligation to pay just compensation, expropriate in accordance with the provisions of sections 5 to 19 of the Expropriation Ordinance, 1978 (Ordinance 13 of 1978), any immovable property, including any right in or over immovable property or so take the right to use temporarily any immovable property required -

- (a) for the erection of broadcasting stations or any installations and facilities in connection therewith, including buildings, masts, power generators and other accessories and enclosures;

- (b) for an access road to such stations or installations, or for a wayleave for the construction and use of any such road or the erection, maintenance or inspection of power or program lines.

(2) The Minister shall not grant the approval referred to in subsection (1) unless he or she is satisfied, after considering a report by the board, that the Corporation is unable to acquire the immovable property or right in question upon reasonable terms by agreement with the owner, and that it is necessary that such immovable property or right be acquired by the Corporation for a purpose contemplated in subsection (1).

(3) For the purposes of subsection (1) a reference in the relevant provisions of the said Expropriation Ordinance, 1978, to the Cabinet, the Minister, the Administration or to the State, shall be construed as a reference to the Corporation.

Exemptions.

24. (1) Notwithstanding anything to the contrary contained in any law -

- (a) the income of the Corporation shall be exempt from income tax;
- (b) no transfer duty, office fee or other moneys shall be payable in respect of the acquisition of immovable property by the Corporation;
- (c) no stamp duty shall be payable in respect of any document if the stamp duty thereon would according to law be payable and have to be borne by the Corporation, and no stamp duty shall be payable in respect of the registration of the transfer of marketable securities issued by the Corporation.

(2) The provisions of section 8(1)(a), (d) and (e) and sections 9(3) and 10 of the Publications Act, 1974 (Act 42 of 1974), shall not apply in relation to any publication or object produced, possessed or imported by the Corporation.

Reports by Corporation to be submitted to National Assembly.

25. (1) The board shall furnish the Minister not later than 30 days before the tabling of the budget in the National Assembly in each year with a report on the work

of the Corporation during its immediately preceding financial year, together with a balance sheet and complete statement of revenue and expenditure for that financial year, which have been audited by the Auditor-General and his or her report in respect of such auditing, and shall in the report so furnished give particulars in relation to -

- (a) the book value of all classes of property owned by the Corporation;
- (b) the amount of securities for loans still outstanding, and the interest thereon, whether paid or unpaid;
- (c) the position of every fund of the Corporation;
- (d) the expenses of management and administration and all other expenses of the Corporation;
- (e) the costs incurred in respect of the erection and construction, repair, improvement or alteration of any plant, equipment or building;
- (f) the price or rent of any immovable property acquired or hired;
- (g) the name of every political party of which any speech by a member thereof or any part of such speech was broadcast for a period longer than 3 minutes, the time allowed for such broadcast and the hour at which such broadcast took place; and
- (h) any other matter which the Minister may require the board to deal with.

(2) The Minister shall table every report furnished in terms of subsection (1) in the National Assembly within 7 days after receiving it, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 7 days after the commencement of its next ensuing session.

Delegation of powers of Corporation.

26. (1) The Corporation may, with the approval in writing of the Minister previously obtained in every particular case and on such conditions and against payment of such compensation as may be determined by mutual agreement between the Corporation and the Postmaster-General or any local authority or other body

established by or under any law, authorise the Postmaster-General, or the local authority or body in question, as the case may be, to exercise or perform, on behalf of the Corporation, any power (other than the power to make regulations), duty or function conferred or imposed upon the Corporation by this Act in relation to the issue of television licences and the collection of the fees prescribed by regulation (including any penalty incurred in connection therewith), the authorisation of persons under section 18 or any other matter relating to television licences.

(2) The Corporation may authorise any radio dealer in writing, on such conditions as the Corporation may determine, to issue any television licence and to collect the fees therefor, including any penalty incurred in connection therewith, on behalf of the Corporation.

Regulations.

27. (1) The Minister may make regulations in relation to -

- (a) the fees that shall be payable in respect of television licences or in respect of the transmission of programmes by way of cables or wires as contemplated in section 4(1)(c) or in any other manner;
- (b) the conditions subject to which television licences may be issued;
- (c)
 - (i) the exemption from the obligation to be in possession of a television licence of, or the granting of such exemption to, a person referred to in section 16, or a member of a household of which another member is in possession of a television licence, or is a person to whom a television licence, or is a person to whom a television set has been hired out or in any other manner been made available in accordance with a television licence issued under section 16(3)(c);
 - (ii) the affinity or other basis by virtue of which persons shall be regarded as members of the household for purposes of such regulations;
 - (iii) the place or places where, the circumstances under which, or the other conditions and requirements subject to which, such exemption shall be of force and effect;

- (d) the exemption of or the granting of exemption to any person who, in terms of any television licence or permission granted thereunder or in terms of any exemption granted to him or her under any regulation contemplated in paragraph (c), is entitled to use a television set at a particular place for the reception of anything broadcast in a broadcasting service, from any prohibition on such use of that television set at any other place, if that television set belongs to a category defined in any such regulation;
- (e) any matter arising from the provisions of sections 7 and 13;
- (f) any other matter which in terms of the provisions of this Act is to be prescribed by regulation.

(2) Different fees or different conditions may be prescribed under subsection (1)(a) or (b) for -

- (a) different television licences or television licences issued for different periods in a licensing year; or
- (b) different television licences issued to -
 - (i) persons belonging to different categories; or
 - (ii) different owners or managers of businesses or institutions who make available different quantities of television sets; or
 - (iii) owners or managers of businesses or institutions of different categories; or
 - (iv) persons who use, or make available for use by other persons different quantities or categories of television sets.

Offences and presumptions.

28. (1) Any person who -

- (a) contravenes or fails to comply with any provision of section 16;
- (b) contravenes or fails to comply with a condition of a television licence;

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- (c) uses a television set in contravention of a permit issued under the provisions of section 17;
- (d) fails or refuses to produce any television licence issued to him or her on demand by any person authorised thereto under section 18;
- (e) obstructs or hinders any person authorised under section 18 in the exercise of his or her powers under that section;
- (f) contravenes or fails to comply with any provision of a regulation made in compliance with this Act;
- (g) after having been required by notice in terms of section 22 to appear before the Auditor-General or designated person referred to in that section and after an amount of reasonable expenses was paid or tendered to him or her, fails, without reasonable excuse, to appear before the Auditor-General or such designated person at the time and place specified in the notice or, when so appearing, refuses or fails, without reasonable excuse, to take the oath or affirmation or to reply to the best of his or her ability to relevant questions put to him or her or to produce to the Auditor-General or such designated person any book or document in his or her possession or control and indicated in the notice,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or, in default of payment, to imprisonment for a period not exceeding 6 months, and the court convicting him or her may, in addition to any penalty that it may impose, order -

- (i) the confiscation to the State of any television set in connection with or by means of which the offence was committed;
- (ii) the payment of all arrear licence fees and any amounts incurred as a penalty in terms of section 16.

(2) Any order made under paragraph (ii) of subsection (1) shall have the same effect as, and may be executed as if it were, a civil judgement in favour of the Corporation.

(3) If in any prosecution for a contravention of any provision of -

- (a) paragraph (a) of subsection (1), it is proved that the accused had a television set in his or her possession at any time or that he or she was the occupier of any premises on which a television set was found at any time, he or she shall be presumed, unless the contrary is proved, to have used such television set, while it was in his or her possession or in or on those premises, for the reception of broadcasts in a broadcasting service;
- (b) paragraph (c) of subsection (1), it is proved that the seal of a television set that has been sealed in accordance with the provisions of section 17 has been broken, it shall be presumed, unless the contrary is proved, that such television set has been used, for the purposes of receiving anything broadcast in a broadcasting service, by the person to whom the permit in respect of that television set has been issued.

Liquidation of Corporation.

29. The Corporation shall not be wound up except by or under the authority of an Act of Parliament.

Prohibition on use of certain names.

30. No person shall carry on business, and no company shall be registered under the Companies Act, 1973 (Act 61 of 1973), or any other law, under a name which is identical to the name of the Corporation or which corresponds in such a manner therewith that it could be misleading, or which includes the word "broadcast" or "broadcasting", or any derivative thereof, in conjunction with the word "National", "Namibia", "Namibian", "State" or "Corporation", or any derivative thereof.

Satisfaction of judgement.

31. No execution, attachment or like process shall in any legal action or proceedings be issued against the Corporation as the nominal defendant or respondent or against any property of which the ownership vests in the Corporation, but the Director-General shall cause the amount (if any) which may be required to satisfy any judgment or order given or made against the nominal defendant or respondent in any such action or proceedings to be paid out of the revenue of the Corporation.

Application of Act 61 of 1973.

32. The Minister may by notice in the *Gazette* declare that any provision of the Companies Act, 1973 (Act 61 of 1973), which is not inconsistent with the provisions of this

Act, shall apply in relation to the Corporation with such modifications as he or she may determine, and he or she may at any time amend or withdraw any such proclamation by like proclamation.

Act binding on State.

33. The provisions of section 16 shall be binding on the State.

Repeal and amendment of laws, and savings.

34. (1) Subject to the provisions of subsections (2), (3), (4), (5), (6) and (7), the laws specified in the Schedule are hereby repealed or amended to the extent indicated in the third column of that Schedule.

(2) On the date of commencement of this Act -

(a) all the assets, liabilities, rights and obligations of the South West African Broadcasting Corporation established by section 2 of the Broadcasting Act, 1976 (Act 73 of 1976), shall vest in the Corporation;

(b) any person who immediately before that date was in the employment of the South West African Broadcasting Corporation established by section 2 of the Broadcasting Act, 1976 (Act 73 of 1976), shall become an officer or employee of the Corporation as if such person were appointed under section 11;

(c) anything done in respect of the South West African Broadcasting Corporation under any provision repealed by subsection (1) which may be done in respect of the Corporation under a corresponding provision of this Act, shall be deemed to have been done under such corresponding provision as if —

(i) in the case of any member appointed under the said Broadcasting Act, 1976, the Minister has appointed such member in terms of section 6 of this Act; and

(ii) in the case of any regulation made under the said Broadcasting Act, 1976, the Minister has made such regulation in terms of section 27 of this Act.

(3) Notwithstanding the repeal of the Broadcasting Act, 1976 (Act 73 of 1976), by subsection (1) of this section -

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- (a) the broadcasting licence issued under section 7 of the Radio Act, 1952 (Act 3 of 1952), read with section 12(2) of the said Broadcasting Act, 1976, to the South West African Broadcasting Corporation, shall be deemed to have been issued to the Corporation for an indefinite period, and shall not be suspended or withdrawn, except with the approval of the Minister;
 - (b) any annual fees, if any, determined under the said section 12(2) in respect of the South West African Broadcasting Corporation, shall be deemed to have been determined in respect of the Corporation, and may from time to time be altered as if the said Broadcasting Act, 1976, had not been repealed;
 - (c) any conditions imposed under section 7(2)(b) of the said Radio Act, 1952, in respect of the South West African Broadcasting Corporation and notified as contemplated in the said section 12(2), shall be deemed to have been imposed upon, and to have been notified in the *Gazette* in respect of the Corporation.
- (4) For the purposes of subsection (3) any reference in the broadcasting licence referred to in paragraph (a) of that subsection -
- (a) to South West Africa, shall be construed as a reference to Namibia;
 - (b) to section 11 of the Broadcasting Act, 1976 (Act 73 of 1976), shall be construed as a reference to section 3 of this Act;
 - (c) to section 12(2)(c) of the said Broadcasting Act, 1976, shall be construed as a reference to this section;
 - (d) to the South African Broadcasting Corporation, shall be construed as a reference to the Corporation;
 - (e) to the Republic of South Africa, shall be deemed to have been deleted;
 - (f) to the Administrator-General, shall be construed as a reference to the Minister.

(5) Anything done prior to the commencement of this Act under any provision of the Broadcasting Act, 1976 (Act 73 of 1976), repealed by subsection (1), in the name of the "Namibian Broadcasting Corporation" in stead of in the name of the South West African Broadcasting Corporation shall not be invalid or invalidated by reason only of the fact that it was so done in the name of the "Namibian Broadcasting Corporation" in stead of in the name of the South West African Broadcasting Corporation.

(6) Notwithstanding the repeal of the Broadcasting Act, 1976 (Act 73 of 1976), the provisions of section 16(2) of, and Schedule 1 to, that Act shall continue to apply in respect of any loan of money to the South West African Broadcasting Corporation, as contemplated in section 16(1) of that Act, which has on the date of the commencement of this Act not been fully repaid or redeemed by the said Corporation as if such loan has been raised by the Corporation under the last-mentioned section.

(7) As from the date of commencement of this Act any reference in any law or document to the South West African Broadcasting Corporation, shall, unless it is obviously inappropriate, be construed as a reference to the Corporation.

(8) The provisions of subsection (1) in so far as it relates to listeners' licences shall be deemed to have come into operation on 1 October 1988.

Short title.

35. This Act shall be called the Namibian Broadcasting Act, 1991.

SCHEDULE

LAWS REPEALED OR AMENDED
(Section 34)

No. and year of law	Short title	Extent of repeal or amendment
Act 3 of 1952	Radio Act, 1952	<p>(a) The amendment of section 1 -</p> <p>(i) by the substitution for the expression "Broadcasting Act, 1976" of the expression "Namibian Broadcasting Act, 1991";</p> <p>(ii) by the substitution for the definition of "radio apparatus" of the following definition:</p> <p>" 'radio apparatus' means any radio transmitting set which is capable of transmitting by radio any sound, image or signal, except any article which the Minister from time to time declares by notice in the <i>Gazette</i> not to be a radio apparatus for the purposes of this Act, and includes any article which the Minister from time to time declares by notice in the <i>Gazette</i> to be a radio apparatus for the purposes of this Act, and includes, for the purposes of section 7(1)(b), a television set;";</p> <p>(b) the amendment of section 2 by the substitution for the expression "Broadcasting Act, 1976 (Act 73 of 1976)" of the expression "Namibian Broadcasting Act, 1991";</p> <p>(c) the amendment of section 4 by the substitution in subsection (1) for the expression "South West African Broadcasting Corporation established by the Broadcasting Act, 1976 (Act 73 of 1976)" of the expression "Namibian Broadcasting Corporation established by section 2 of the Namibian Broadcasting Act, 1991;";</p> <p>(d) the amendment of section 5 -</p> <p>(i) by the deletion in subsection (1) of the words "or otherwise than in accordance with subsection (2) receive" and the words "or reception"; and</p> <p>(ii) by the deletion of subsections (2), (3), (4) and (5);</p> <p>(e) the amendment of section 6 -</p> <p>(i) by the deletion in paragraph (a) of subsection (1) of the words "or prescribed in section 5(2) for the service for which such radio apparatus is capable of being used";</p>

- (ii) by the deletion of paragraphs (b) and (c) of subsection (1); and
- (iii) by the deletion of subsection (4);
- (f) the amendment of section 7 -
 - (i) by the substitution in subsection (1) for the expression "12(2) of the Broadcasting Act, 1976 (Act No. 73 of 1976)" of the expression "34(3) of the Namibian Broadcasting Act, 1991";
 - (ii) by the substitution in subsection (1) in the words following paragraph (d) for the expression "Minister of National Education" of the expression "Minister of Information and Broadcasting" and for the expression "South West African Broadcasting Corporation" of the expression "Namibian Broadcasting Corporation";
 - (iii) by the substitution in paragraph (b) of subsection (2) for the expression "Minister of National Education" of the expression "Minister of Information and Broadcasting; and
 - (iv) by the deletion in subsection (3) of the words "listener's licence or";
- (g) the amendment of section 9 by the substitution for the expression "12 of the Broadcasting Act, 1976 (Act No. 73 of 1976)" of the expression "34(3) of the Namibian Broadcasting Act, 1991";
- (h) the amendment of section 11 -
 - (i) by the deletion in subsection (1) of the words "or reception" wherever they occur; and
 - (ii) by the deletion of subsection (3);
- (i) the amendment of section 12 by the substitution in paragraph (b) of subsection (2) for the words "South West African Broadcasting Corporation" of the words "Namibian Broadcasting Corporation";
- (j) the amendment of section 16 -
 - (i) by the substitution in paragraph (b) for the expression "Broadcasting Act, 1976 (Act No. 73 of 1976)" of the expression "Namibian Broadcasting Act, 1991", and by the deletion of the words "or receive"; and
 - (ii) by the substitution in paragraph (c) for the expression "Broadcasting Act, 1976" of the expression "Namibian Broadcasting Act, 1991"; and

		<p>(k) the amendment of section 19 -</p> <p>(i) by the deletion in paragraph (b) of subsection (1) of the expression "or the Broadcasting Act, 1976 (Act No. 73 of 1976)"; and</p> <p>(ii) by the deletion in paragraph (c) of subsection (1) of the expression "or the Broadcasting Act, 1976".</p>
Act 44 of 1958	Post Office Act, 1958	<p>The amendment of section 78 -</p> <p>(a) by the substitution in subparagraph (i) of paragraph (a) of subsection (1B) for the expression "Minister of National Education" of the expression "Minister of Information and Broadcasting" and for the expression "South West African Broadcasting Corporation" of the expression "Namibian Broadcasting Corporation"; and</p> <p>(b) by the substitution in paragraph (b) of subsection (1B) for the expression "Minister of National Education" of the expression "Minister of Information and Broadcasting".</p>
Act 73 of 1976	Broadcasting Act, 1976	The repeal of the whole.
Proclamation AG. 16 of 1979	Broadcasting Act Amendment Proclamation, 1979	The repeal of the whole.
Proclamation AG. 20 of 1983	Broadcasting Act Amendment Proclamation, 1983	The repeal of the whole.

**Certified correct as passed by the
NATIONAL ASSEMBLY**

.....
Secretary of the National Assembly
.....

Assented to -

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President
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