

Namibia

Namibia Special Risks Insurance Association Act, 2017

Act 5 of 2017

Legislation as at 27 September 2017

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Namibia Special Risks Insurance Association Act, 2017
 Contents

Part 1 – Introductory provisions 1

 1. Definitions 1

 2. Object of Act 3

Part 2 – Establishment of Company 3

 3. Conversion of the Company 3

 4. Application of provisions of Companies Act 4

 5. Application of provisions of Short-term Insurance Act 4

 6. Objects of Company 5

 7. Powers and functions of Company 5

 8. Principal office and other branch offices of Company 5

 9. Board of directors 5

 10. Appointment of directors 6

 11. Alternate directors 6

 12. Term of office 7

 13. Vacation of office 7

 14. Declaration of interest by directors or alternate directors 7

 15. Meetings of Board 8

 16. Committees of Board 9

 17. Minutes of proceedings of Board and committees 10

 18. Delegation of powers and functions 10

 19. Managing director 11

 20. Staff of Company 12

 21. Limitation of liability 12

Part 3 – Financial provisions 12

 22. Capital and reserve funds 12

 23. Margin of solvency 13

 24. Funds of Company 13

 25. Investment of funds 13

 26. Loans and credit facilities to Company 13

 27. General reserve fund 14

 28. Distribution of balance of net profits 14

 29. Financial year 14

 30. Accounts and auditing 14

 31. Powers and functions of auditor 15

32. Annual report	16
33. Preservation of secrecy	16
Part 4 – Short-term insurance for special risks	17
34. Termination of existing Agreement with NASRIA	17
35. Premiums protected against creditors	17
36. Restriction of insurance for special risks	17
Part 5 – General provisions	18
37. Payment of certain taxes, duties, levies and other fees	18
38. Regulations	18
39. Staff rules and administrative directives by Board	18
40. Liquidation or judicial management of Company	18
41. Repeal of laws	19
42. Savings and transitional provisions	19
43. Short title and commencement	19



Republic of Namibia
Annotated Statutes

Namibia Special Risks Insurance Association Act, 2017

Act 5 of 2017

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ACT

To provide for the establishment of the Namibia Special Risks Insurance Association as a public company, with a share capital; to determine the insurance business it may underwrite; and to provide for incidental matters.

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

Part 1 – Introductory provisions

1. Definitions

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

[\[The subsection number \(1\) has been omitted. There is a subsection \(2\) below, so the subsection number \(1\) has been inserted here as indicated to prevent confusion.\]](#)

“**Agreement**” means the agreement which the Government of the Republic of Namibia represented by the Minister entered into with the Association in terms of section 1 of the Second Finance Act, 1987 (Act [No. 27 of 1987](#));

“**articles**” means the articles of association of the Company;

“**Association**” means the National Special Risks Insurance Association established in terms section 21 of the Companies Act, 2004 (Act [No. 28 of 2004](#));

“**Board**” means the board of the Company referred to in section 9;

“**Companies Act**” means the Companies Act, 2004 (Act [No. 28 of 2004](#));

“Company” means the public company, Namibia Special Risks Insurance Association Limited referred to in section 3;

“loss in respect of a mortgage loan” means any financial loss suffered by a moneylender in terms of a money loan, regardless of the amount of such loan, secured by a mortgage bond over immovable property situated in Namibia, where -

- (a) the loss that results from the moneylender being unable to recover at a sale of such property -
 - (i) in execution, whether the sale was held at the instance of the moneylender or at the instance of any other person; or
 - (ii) by public auction resulting from the insolvency of the borrower, any amount, including interest and other charges, owing in terms of the mortgage loan; and
- (b) the sale referred to in paragraph (a) is directly or indirectly related to or caused by any of the actions or circumstances contemplated in the definition of “loss of or damage to property”;

“loss of or damage to property” means any loss of or damage to property related to or caused by -

- (a) any act, whether on behalf of any organisation, body, person or group of persons, calculated or directed to overthrow or influence any state or government, or any regional, local or traditional authority with force or by means of fear, terrorism or violence;
- (b) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, to bring about any social or economic change, or in protest against any state or government, or any regional, local or traditional authority, or for the purpose of instilling fear in the public;
- (c) any riot, strike or public disorder, including civil commotion, labour disturbances or lock-outs, or any act or activity which is calculated or directed to bring about a riot, strike or such disorder;
- (d) any attempt to perform any act referred to in paragraph (a), (b) or (c); or
- (e) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in paragraph (a), (b), (c) or (d);

“memorandum” means the memorandum of association of the Company;

“Minister” means the Minister responsible for finance;

“moneylender” means a moneylender as defined in section 1 of the Usury Act, 1968 (Act [No. 73 of 1968](#));

“net liabilities” means the liabilities of the Company reduced to the extent that any such liabilities have been reinsured with a registered reinsurer as defined in section 1(1) of the Short-term Insurance Act;

[The definition of “Public Enterprises Governance Act”, which appears below, should appear here for correct alphabetical order.]

“Registrar of Companies” means the Registrar of Companies as defined in section 1 of the Companies Act;

“Registrar of Short-term Insurance” means the Registrar of Short-term Insurance as defined in section 1(1) of the Short-term Insurance Act;

“Short-term Insurance Act” means the Short-term Insurance Act, 1998 (Act [No. 4 of 1998](#));

“short-term insurance industry” means -

- (a) a registered insurer as defined in section 1(1) of the Short-term Insurance Act; and

- (b) a person appointed in Namibia by the Council of Lloyds in terms of section 36(1) of that Act as being authorised to act on behalf of the Council and on behalf of underwriters at Lloyds;

“special risks” means -

- (a) loss in respect of a mortgage loan; and
- (b) loss of or damage to property, including consequential loss resulting from such loss or damage, to the extent determined by the Board with the written approval by the Minister; and

“Public Enterprises Governance Act” means the Public Enterprises Governance Act, 2006 (Act [No. 2 of 2006](#)).

[This definition is not in the correct alphabetical order. It should appear after the definition of “net liabilities”. This Act was previously known as the “State-owned Enterprises Governance Act”, which may account for the error.]

- (2) The Minister may, by notice in the Gazette and after consultation with the Board, declare any activity to be a special risk for the purposes of this Act.

2. Object of Act

The object of this Act is to -

- (a) convert the Association into a public company having a share capital, with shares held by the State;
- (b) determine the nature and ambit of the special risks that the Company may underwrite; and
- (c) determine the role of the State in the short-term insurance industry as regards special risks and to reduce the reinsurance risk exposure of the State.

Part 2 – Establishment of Company

3. Conversion of the Company

- (1) From a date determined by the Minister by notice in the Gazette, the Association is converted into a public company having a share capital, to be known as the Namibia Special Risks Insurance Association Limited.
- (2) The shortened form of the name of the Company is “NASRIA” which may, despite anything to the contrary contained in the Companies Act, be used independently of its name referred to in subsection (1).
- (3) Subject to subsection (5), the Company must have articles and a memorandum drawn up in accordance with the Companies Act and the Minister must sign and submit them to the Registrar of Companies for registration within 60 days of this Act coming into operation.
- (4) When the articles and memorandum have been signed as contemplated in subsection (3) -
- (a) they are deemed to comply with the provisions of the Companies Act relating to the signature of the articles and memorandum of a company; and
- (b) the Company is deemed to comply with the provisions of the Companies Act relating to the membership of a public company.
- (5) The Registrar of Companies must on receipt of the articles and memorandum register them in accordance with the provisions of the Companies Act and -
- (a) endorse a certificate under his or her hand and seal that the Company is duly incorporated as a public company; and

- (b) issue the Company with a certificate to commence business, within 30 days after the date on which the Minister submitted the articles and memorandum in terms of subsection (3).
- (6) Despite the provisions of the Companies Act, upon the conversion of the Association into a public company as contemplated by subsection (1), the Company has -
 - (a) subject to section 22, a share capital of N\$1, represented by one ordinary share with a nominal value of N\$1, held by the State; and
 - (b) the State as its only member.
- (7) The Minister must exercise the powers and perform the functions of a member and shareholder of the Company on behalf of the State.
- (8) The shares held in the Company may not be alienated and issued to any person other than to the State, unless the Company is being restructured in accordance with the procedures laid down in Part VI of the Public Enterprises Governance Act.
- (9) The Minister may -
 - (a) alter the articles and memorandum of association of the Company, subject to subsection (10);
 - (b) appoint the board of directors of the Company in terms of section 10; and
 - (c) do anything necessary to give effect to the conversion of the Company into a public company.
- (10) The Minister may not alter the main business of the Company.
- (11) The Company is exempt from payment of all fees chargeable under the Companies Act or the Stamp Duties Act, 1993 (Act [No. 15 of 1993](#)) in respect of its conversion, registration and certificate to commence business.

4. Application of provisions of Companies Act

- (1) Subject to this Act, the Companies Act applies to the Company.
- (2) Sections 72, 110(1), 182, 198, 216(2) and 349(d) of the Companies Act do not apply to the Company.
- (3) The Minister may, after consultation with the Minister responsible for trade, by notice in the Gazette, exempt the Company from the application of any other provisions of the Companies Act or render such provision applicable subject to such modification as the Minister may consider fit, and the Minister may withdraw or amend such notice.
- (4) The Registrar of Companies may issue such directives and authorise such deviations from the regulations made under the Companies Act and the forms prescribed by that Act as he or she may consider necessary to give effect to the provisions of this Act.

5. Application of provisions of Short-term Insurance Act

- (1) On issuance to the Company by the Registrar of Companies of a certificate to commence business in terms of section 3(7)(b), the Company is deemed to be a short-term insurer as contemplated by the Short-term Insurance Act and the provisions of that Act apply in respect of the Company subject to subsection (3).
- (2) The Registrar of Short-term Insurance, despite section 16 of the Short-term Insurance Act, on receipt of the documents referred to in section 3(5), must issue a certificate of registration to the Company as a short-term insurer in respect of all classes of short-term insurance business referred to in section 13 of the Short-term Insurance Act.

- (3) The Registrar of Short-term Insurance may, with the approval of the Minister, by notice in the Gazette, issue such directives and authorise such exemptions from or modifications to the Short-term Insurance Act, and any regulations published under that Act, as he or she considers necessary in respect of the Company in order to give effect to the provisions of this Act.

6. Objects of Company

The objects of the Company are to -

- (a) carry on short-term insurance business relating to special risks and to conduct all affairs relating thereto in accordance with sound insurance practices and methods;
- (b) promote the development of, and the participation of the people of Namibia in, the short-term insurance industry in Namibia; and
- (c) provide short-term insurance cover of international standards for special risks.

7. Powers and functions of Company

- (1) Despite anything to the contrary contained in the Short-term Insurance Act, the functions of the Company are to -
 - (a) accept short-term insurance business in respect of special risks;
 - (b) reinsure against loss or damage of any kind arising from or in connection with any risk or contingency undertaken by the Company in respect of any matter; and
 - (c) reinsure with any registered reinsurer or any foreign reinsurer any risk undertaken by the Company.
- (2) The Company may, subject to the provisions of this Act, do or cause to be done all or any of such lawful things which are -
 - (a) necessary to achieve its objects and to effectively perform its functions in terms of this Act; and
 - (b) in the best interest of the Company.

8. Principal office and other branch offices of Company

- (1) The principal office of the Company is in Windhoek, or such other place as the Board may determine after consultation with the Minister.
- (2) The Company may establish one or more branch offices at such place within or outside Namibia as the Board may determine after consultation with the Minister.

9. Board of directors

- (1) The Company must have a board of directors which is responsible for the policy, management and control of the affairs of the Company and which, in the name of the Company, must exercise the powers and perform the functions of the Company subject to this Act, the Companies Act, its articles and memorandum and any other applicable laws.
- (2) The Board may make rules relating to the terms and conditions of the policy agreement setting out the underwriting principle of the insurance business of the Company.

10. Appointment of directors

- (1) Subject to section 14 and 15 of the Public Enterprises Governance Act, the Board consists of five members appointed by the Minister as follows -
 - (a) the managing director who is an ex officio member; and
 - (b) five members appointed by the Minister in consultation with the Registrar of Short-term Insurance and in accordance with subsection (2);
 - (d) the appointments under paragraph (b) of this subclause shall ensure that not all the appointees are of one gender.

[Paragraph (d) is mislabelled in the Government Gazette; there is no paragraph (c). The word “subclause” in the paragraph labelled (d) should be “subsection”.]

- (2) A person to be appointed under subsection (1) must possess knowledge and a minimum of five years experience in corporate governance, insurance, economics, law or other related fields of expertise.
- (3) The Minister must appoint the chairperson and deputy chairperson of the Board from among its members.
- (4) An appointment of a director may not take effect until the written consent of such person to act as a director of the Company has been lodged with the Company on the prescribed form.
- (5) The Minister, as soon as practicable after the constitution of the Board or any change in such constitution, must publish in the Gazette, the names of the directors and the date of commencement of their terms of office.
- (6) A director, who is not in the full-time employment of the State, must be paid out of the funds of the Company, such allowances or other remuneration in respect of his or her service as director as the Minister may determine, subject to section 22(1) of the Public Enterprises Governance Act.
- (7) Allowances determined under subsection (6) may differ according to the different offices held by directors.
- (8) A person is not eligible for appointment as a director if he or she -
 - (a) is not a Namibian citizen or is the holder of a permanent residence permit in Namibia;
 - (b) is an unrehabilitated insolvent;
 - (c) has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine;
 - (d) has a financial or other interest likely to prejudicially affect the performance of his or her duties as director of the Company; or
 - (e) is disqualified in terms of the Companies Act from holding the office of director.

11. Alternate directors

- (1) Subject to section 15 of the Public Enterprises Governance Act, the Minister, may appoint a person to be the alternate for one or more directors.

[The comma after the word “Minister” is superfluous.]

- (2) Any appointment or any removal from office of an alternate director must be in writing, addressed and delivered to the alternate director and to the chairperson of the Board.
- (3) An alternate director must -
 - (a) serve on the Board only during the period of absence or inability of the director to whom he or she is alternate; and

- (b) during the period of service, exercise all the powers and perform all the functions of the director to whom he or she is alternate.
- (4) An alternate director is remunerated, as determined by the Minister in consultation with the Board, from the remuneration and allowances that are due to the director in whose place he or she acts or which would have become due to such director if he or she had acted as director.
- (5) Section 10 and 12 apply, with the necessary changes in respect of an alternate director.

[The word “Section” should be plural: “Sections 10 and 12...”. There should be a comma after the word “changes” to correctly set off the phrase “with the necessary changes”.]

12. Term of office

Despite anything in any other law, the term of office of a director is three years and he or she may be reappointed on expiry of such term.

13. Vacation of office

- (1) The office of a director becomes vacant if the director -
 - (a) resigns as a director by giving not less than one month’s written notice to the Minister;
 - (b) is an unrehabilitated insolvent;
 - (c) is detained as a mentally ill person under any law;
 - (d) is absent from three consecutive meetings of the Board without the leave of the chairperson of the Board;
 - (e) is removed from office under subsection (2); or
 - (f) becomes subject to a disqualification referred to in section 10(8).
- (2) The Minister may by written notice remove a director from office if the Minister, after having afforded the member an opportunity to be heard, is satisfied that the member -
 - (a) is incapacitated by physical or mental illness;
 - (b) is guilty of conduct prejudicial to the objectives of the Company; or
 - (c) is unfit or unable to effectively perform the functions of his or her office.

14. Declaration of interest by directors or alternate directors

- (1) For the purposes of this section -
 - (a) “associate”, in relation to a director, means -
 - (i) a person who -
 - (aa) is a close relative of the director; or
 - (bb) is a partner, employee or employer of the director; or
 - (cc) is a debtor, mortgager, creditor or mortgagee of, or otherwise has direct, material or commercial dealings with, the Director; or
 - (ii) any company or any body of persons, whether corporate or unincorporated, of which the director is also a director or in which the director holds any office or position or in which the director holds a controlling interest;

- (b) “close relative”, in relation to a director, means -
 - (i) his or her spouse; or
 - (ii) his or her child, stepchild, parent or stepparent, or any descendant of such parent or stepparent; or
 - (iii) the spouse of any of the persons mentioned in paragraph (b);
 - (c) “director” includes an alternate director where applicable;
 - (d) “partner”, in relation to a director, means any person associated in any kind of partnership with the director; and
 - (e) “spouse” includes a party to a customary union.
- (2) At the first meeting of the Board, after a person has been appointed or elected as a director, he or she must declare to the Board any financial or other assistance, being provided by the Company to him or her or to any of his or her associates.
- (3) A director who is in any way, whether directly or indirectly, interested in any business or contract or any proposed business or contract with the Company, at the meeting of the Board at which such business or contract or proposed business or contract is first taken into consideration, must declare to the Board the nature and extent of his or her interest or of any of his or her associates.
- (4) If a director becomes interested, whether directly or indirectly, in any business or contract or any proposed business or contract with the Company after it has been taken into consideration by the Board, he or she must, at the first meeting of the Board after he or she became so interested, declare to the Board the nature and extent of his or her interest or of any of his or her associates.
- (5) A general notice that a director or any of his or her associates is a member of -
 - (a) any company or body of persons; and
 - (b) is interested in all business or contracts by that company or body of persons,is not sufficient disclosure for the purposes of this section.
- (6) Whenever any business or contract or any proposed business or contract by the Company with the company or body of person referred to in subsection (5) is taken into consideration by the Board, a declaration of interest required in terms of subsection (3) or (4), must be made to the Board.
- (7) A director may not take part in any consideration of, or cast his or her vote on, a matter relating to any business or contract or any proposed business or contract with the Company, or any other matter connected with the interests of the Company, in which he or she or any of his or her associates has an interest.
- (8) A declaration of interest made in terms of this section must be recorded in the minutes of the meeting of the Board at which such declaration is made.
- (9) Any director who contravenes or fails to comply with subsection (2), (3), (4) or (7) commits an offence and is liable to a fine not exceeding N\$ 500 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

15. Meetings of Board

- (1) The first meeting of the Board must be held at such time and place as the Minister may determine, and subsequent meetings of the Board must be held at such time and place as the Board may determine.
- (2) The chairperson may at any time convene a special meeting of the Board, and must do so if so requested in writing -
 - (a) by the Minister; or

- (b) by at least three directors.
- (3) At a meeting of the Board -
- (a) a majority of the members of the Board forms a quorum;
 - (b) all questions are decided by a majority of votes of the members present and voting; and
 - (c) the member presiding has, in the event of an equality of votes, a casting vote in addition to his or her deliberative vote.
- (4) Subject to the provisions of section 8(3), the chairperson of the Board presides at all meetings of the Board and in his or her absence, the deputy chairperson must preside.
- (5) If both the chairperson and deputy chairperson are absent from any meeting, the members of the Board present must elect one from their number to preside at that meeting and the member so presiding has the powers and perform the functions of the chairperson.
- [The verb “perform” should be “performs” to be grammatically correct.]**
- (6) A decision of the Board or an act performed under a direction of the Board is not invalid because of -
- (a) a defect in the appointment of a member of the Board;
 - (b) the existence of a vacancy in the membership of the Board; or
 - (c) the fact that a person not entitled to sit as a member of the Board was in attendance when the decision was taken or act authorised,
- if the decision was taken or act authorised by a majority of the members who were present and entitled to vote at such meeting.
- (7) Despite subsection (3), a resolution of the Board contained in writing and signed by all the directors constitutes a valid decision of the Board as if it had been passed at a meeting of the Board and such resolution must be recorded in the minutes of the first ensuing meeting of the Board.
- (8) The chairperson of the Board may, with the written approval of the Board, invite any person who in his or her opinion possesses the necessary expertise in any matter which is under consideration by the Board to take part in such discussions at a meeting of the Board as in the opinion of the chairperson relate to the expertise of such person, but such person may not cast a vote in respect of any matter which is being put to the vote.
- (9) The Board may, after consultation with the Minister, make rules relating to convening of, and the procedure at a meeting of the Board of a committee of the Board.

16. Committees of Board

- (1) The Board may establish a committee for the purposes of -
- (a) advising the Board in the exercise of its powers and performance of its functions; and
 - (b) performing any function that the Board may delegate to such committee,
- but a decision or recommendation of a committee is subject to ratification by the Board.
- (2) A committee established under subsection (1) consists of two or more directors appointed by the Board from among its members, and may with the written approval of the Board co-opt persons of special expertise to advise it in the performance of its functions.
- (3) The Board must designate one of the committee members as chairperson of that committee.

- (4) Subject to section 22(1) of the Public Enterprises Governance Act, a member of the committee, who is not in the full-time employment of the State, must be paid from the funds of the Company such allowances as the Board, with the written approval of the Minister, may determine.

17. Minutes of proceedings of Board and committees

- (1) The Board must cause proper records to be kept of the proceedings at every meeting of the Board and of every committee appointed by the Board under section 14(1), and the chairperson of the Board must -
- (a) within 14 days from the date on which a meeting of the Board was held, submit to the Minister a copy of the minutes of that meeting; or
 - (b) at the written request of the Minister, submit to the Minister a copy of the minutes of any meeting of a committee of the Board.
- (2) Any minutes referred to in subsection (1) purporting to have been signed by the chairperson of the meeting to which the minutes relate or by the chairperson at the next meeting of the Board or of the committee in question are prima facie evidence of the proceedings of the meeting to which the minutes relate.

18. Delegation of powers and functions

- (1) Subject to section 19(5), the Board may delegate any power, duty or function conferred upon it under this Act to -
- (a) a director of the Board;
 - (b) a committee of the Board;
 - (c) the managing director; or
 - (d) any other employee of the Company.
- (2) The managing director may delegate any power or function conferred upon him or her under this Act or delegated to him or her under subsection (1), to any other employee of the Company.
- (3) A power or function delegated under subsection (1) must be exercised or performed subject to the direction of the Board and the Board is not divested of such delegated power or function, and may -
- (a) amend or set aside anything done in the exercise of such power or the performance of such function; and
 - (b) may at any time withdraw such delegation.
- (4) A power or function delegated under subsection (2) must be exercised or performed subject to the direction of the managing director and the managing director is not divested of such delegated power or function, and may -
- (a) amend or set aside anything done in the exercise of such power or the performance of such function; and
 - (b) may at any time withdraw such delegation.
- (5) Subject to section 20(1), the Board may under subsection (1)(c) delegate to the managing director the power to adjust post structures, to appoint and dismiss employees of the Company and to determine their conditions of service, but the Board may not delegate its powers under this Act to -
- (a) make rules of procedure for the meetings of the Board or its committees; or
 - (b) determine the terms and conditions of service of the managing director under this section.

- (6) Nothing in this section prevents the Board or the managing director from exercising a delegated power under this section.

19. Managing director

- (1) Subject to the provisions of this Act, the Board with the written approval of the Minister must -
- (a) appoint a suitably qualified person to be the managing director of the Company; and
 - (b) subject to section 22(3) of the Public Enterprises Governance Act, determine the terms and conditions of service and other benefits of the managing director.
- (2) The managing director -
- (a) is the chief executive officer of the Company;
 - (b) holds office for a term of five years and is eligible for re-appointment at the end of such term, but he or she may be removed from office before the expiry of the term of office in accordance with the provisions of the contract of employment;
 - (c) must be in the full-time employment of the Company and may not engage in any other occupation or employment, whether for remuneration or not, without the prior written approval of the Board, which approval may only be given after consultation with the Minister;
 - (d) must exercise such powers and perform such functions as are conferred by this Act or assigned or delegated to him or her by the Board;
 - (e) is entitled to attend all meetings of the Board and to take part in discussions at such meetings but does not have a voting right; and
- [The word “discussions” is misspelt in the Government Gazette, as reproduced above.]**
- (f) is, subject to the control and directions of the Board, responsible for the efficient management and administration of the Company.
- (3) A person may not be appointed as managing director if such person -
- (a) is under the age of 21 years or has attained the age of 65 years;
 - (b) is not a Namibian citizen or a holder of a permanent residence permit;
 - (c) is an unrehabilitated insolvent;
 - (d) has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine; or
 - (e) has at any time by order of a competent authority, been suspended or disqualified from practising a profession on grounds of professional or personal misconduct.
- (4) The managing director may, before the expiration of his or her term of office -
- (a) be removed from office by the Board, with the concurrence of the Minister, on grounds of misconduct or inability to efficiently discharge the functions of his or her office, subject to the rules of natural justice; or
 - (b) resign from office by giving a written notice of resignation of not less than three months to the Board.
- (5) If the office of managing director is vacant or if he or she is unable for any reason to perform the functions of his or her office, the Board may designate any director or one of the senior employees of the Company to temporarily act as managing director, and such person must exercise the powers and perform the functions of the managing director during that period.

- (6) A person designated to act as managing director in terms of subsection (5) may not act for a period of more than six months, but the Board may for sufficient reason extend such appointment for a further period not exceeding six months.

20. Staff of Company

- (1) The Board, on such terms and conditions of service as the Board may determine, may appoint as senior management staff, such persons as it may consider necessary in order to assist the board to perform the functions and conduct the affairs of the Company.
- (2) The Board may promote, discharge, reduce in rank or grade or transfer a senior management staff member, appointed in terms of subsection (1), in accordance with those terms and conditions.
- (3) The managing director, on such terms and conditions of service as the Board may determine, may appoint as staff members persons whom the managing director may consider necessary to assist in performing the functions and conducting the affairs of the Company.
- (4) The managing director may promote, discharge, reduce in rank or grade or transfer a staff member, appointed in terms of subsection (3), in accordance with those terms and conditions.

21. Limitation of liability

- (1) A director, committee member or employee of the Company is not personally liable for any act or omission by such director, committee member or employee done in good faith in the exercise or performance or purported exercise or performance of any power or function under this Act unless such act or omission is due to the wilful misconduct, dishonesty, gross negligence or failure to comply with this Act of such director, committee member or employee.
- (2) Despite the provisions of the Companies Act, the Company may obtain, pay and maintain a professional indemnity insurance policy on behalf of -
 - (a) each director;
 - (b) each committee member;
 - (c) the managing director; or
 - (d) each employee,of the Company issued in Namibia by a registered short-term insurer in respect of any liability that may arise due to the -
 - (i) gross negligence;
 - (ii) failure to comply with any provision of this Act; or
 - (iii) default or breach of duty,of such director, committee member, managing director or employee occurring in the course and scope of his or her duties to the Company.

Part 3 – Financial provisions

22. Capital and reserve funds

- (1) Within six months after the conversion of the Company into a public company, the Registrar of Short-term Insurance, after consultation with the Minister, must determine the -
 - (a) percentage of the current reserves of the Company which are essential for the Company to do its main business as a short-term insurer for special risks; and

- (b) percentage of those reserves which are not essential for that purpose.
- (2) Before making a determination in terms of subsection (1), the Registrar of Short-term Insurance must -
 - (a) consult with the Board; and
 - (b) take into account the result of an independent actuarial assessment obtained by that Registrar and paid for by the Company for the purposes of this section.
- (3) The Board, after consultation with the Minister and in accordance with the dividends policy applicable to public enterprises, may declare a dividend to be paid from any excess reserves determined in terms of subsection (1)(b).

23. Margin of solvency

- (1) The Company must have and at all times maintain a margin of solvency sufficient for the purposes of carrying on short-term insurance business for special risks.
- (2) The Company must have and maintain the margin referred in subsection (1), if the aggregate value of its assets exceeds the amount of its net liabilities by not less than the percentage, as may be determined by the Minister, on recommendation of the Board, by notice in the Gazette, of the total amount received by it in respect of premiums, after deducting an amount equal to the premiums paid by the Company in respect of any reinsurance business, during its last preceding financial year.
- (3) For the purposes of subsection (2) all contingent and prospective liabilities of the Company, but excluding liabilities in respect of share capital or non-distributable or distributable reserves, must be taken into account in assessing the amount of its net liabilities.

24. Funds of Company

- (1) The funds of the Company consist of -
 - (a) moneys vesting in or accruing to the Company from any source, whether in the course of its business or otherwise;
 - (b) moneys appropriated by Parliament for the Company for the achievement of its objects, including the holding of shares in the Company;
 - (c) the proceeds derived from the issue of shares in the Company if the Company is restructured in terms of section 3(8);
 - (d) interest derived from investments made by the Company; and
 - (e) moneys borrowed by the Company with the approval of the Minister in terms of section 26.
- (2) The expenditure incurred by or on behalf of the Company in connection with the performance of its functions, including the payment of any remuneration, allowances or other benefits with which the Company is charged in terms of this Act, must be defrayed from the funds of the Company.

25. Investment of funds

Subject to section 27 of the Public Enterprises Governance Act, moneys that the Company does not require for immediate use or as a reasonable working balance, may be invested at any financial institution approved by the Minister.

26. Loans and credit facilities to Company

Subject to section 20(3)(d) of the Public Enterprises Governance Act, the Company may, with the prior written approval of the Minister after consultation with the Registrar of Short-term Insurance, borrow

moneys or obtain any other credit facilities from any banking institution, building society or any other institution approved by the Minister.

27. General reserve fund

(1) The Company must -

- (a) establish; and
- (b) maintain,

a general reserve fund into which must be deposited at the end of each financial year 25 percent, or such other percentage, as the Board may determine with the written approval of the Minister, of the annual net profits of the Company, if the general reserve fund is equal to or exceeds the margin of solvency of the Company contemplated by section 23.

(2) The Board, with the written approval of the Minister, may establish such other special reserve funds as the Board may consider prudent, into which must be deposited at the end of each financial year such additional percentage of the annual net profits of the Company as the Board considers necessary for the effective conduct of the affairs of the Company.

28. Distribution of balance of net profits

The Board may declare and pay dividends in accordance with section 25 of the Public Enterprises Governance Act.

29. Financial year

The financial year of the Company ends on 31 March of each year.

30. Accounts and auditing

(1) The Company must -

- (a) keep proper accounts; and
- (b) financial information,

relating to all its affairs so as to at all times present fairly and reflect correctly all the financial transactions and the financial position of the Company.

(2) The Company must appoint an auditor registered under the Public Accountants' and Auditors' Act, 1951 (Act [No. 51 of 1951](#)).

(3) The auditor referred to in subsection (2) must annually audit the books of accounts, accounting records, and financial statements of the Company.

(4) When so requested in writing by the Minister, the Company must submit to the Minister for a period designated by the Minister -

- (a) a comprehensive income statement;
- (b) a statement of financial position;
- (c) a cash flow statement;
- (d) a statement of short-term insurance for special risks accepted, containing the terms and conditions of any such acceptance; and
- (e) such other statements as the Minister may request,

duly audited and certified by the auditor, together with a written report by that auditor.

31. Powers and functions of auditor

- (1) An auditor of the Company must, in addition to the duties imposed upon him or her by or under the Public Accountants' and Auditors' Act, 1951 (Act [No. 51 of 1951](#)) and the Companies Act audit the books of accounts, accounting records and financial statements of the Company referred to in section 30 and, if he or she is satisfied that they -
 - (a) are prepared in the prescribed form; and
 - (b) according to the books of the Company, present fairly, or give a true and fair view of, or reflect correctly, the matters dealt with therein.
- (2) The auditor must certify such books of accounts, accounting records and financial statements to that effect, if he or she cannot so satisfy himself or herself or certify such books of accounts, accounting records and financial statements subject to such qualifications as he or she may consider necessary.

[Subsections (1) and (2) are reproduced as they appear in the Government Gazette but it appears that there is some error as neither subsection forms a complete and logical sentence on its own. Subsections (1) and (2) may have been intended to be combined, possibly as follows:]

[“(1) An auditor of the Company must, in addition to the duties imposed upon him or her by or under the Public Accountants' and Auditors' Act, 1951 (Act [No. 51 of 1951](#)) and the Companies Act, audit the books of accounts, accounting records and financial statements of the Company referred to in section 30 and, if he or she is satisfied that they -]

[(a) are prepared in the prescribed form; and]

[(b) according to the books of the Company, present fairly, or give a true and fair view of, or reflect correctly, the matters dealt with therein,]

[the auditor must certify such books of accounts, accounting records and financial statements to that effect, or, if he or she cannot so satisfy himself or herself, or certify such books of accounts, accounting records and financial statements subject to such qualifications as he or she may consider necessary.”]

- (3) As soon as practicable after the audit, the auditor must -
 - (a) furnish the Board with a written report on his or her findings; and
 - (b) submit to the Board a written report on any material irregularity that he or she believes has taken place or is taking place in the conduct of the affairs of the Company which has caused or is likely to cause financial loss to it or to its policyholders or creditors.
- (4) An auditor of the Company appointed in terms of section 30(2) has a right of access to the securities, books, accounts and vouchers of the Company and may require from its directors, the managing director or employees such information as may be necessary for the performance of his or her duties as auditor.
- (5) An auditor of the Company must, at the cost of the Company, undertake such other examination of the affairs of the Company as he or she may be requested by the Minister or by the Board for the purposes of this Act.
- (6) An auditor may not incur any liability to any person in consequence of -
 - (a) having furnished in good faith information on any irregularity or other matter which the auditor has become aware of in his or her capacity as auditor of the Company; and

- (b) which in his or her opinion may be of concern to the Board having regard to the Board's supervisory functions in terms of this Act.

[The structure of this subsection is not logical. It may have been intended to read as follows:]

[“(6) An auditor may not incur any liability to any person in consequence of having furnished in good faith information on any irregularity or other matter -]

[(a) which the auditor has become aware of in his or her capacity as auditor of the Company; and]

[(b) which in his or her opinion may be of concern to the Board having regard to the Board's supervisory functions in terms of this Act.”]

- (7) The Auditor-General may, at the request of the Minister, audit the books of accounts, accounting records and financial statements of the Company
- (8) A person who hinders or obstructs an auditor in the performance of his or her functions or the exercise of his or her powers in terms of this Act commits an offence and is liable to a fine not exceeding N\$ 500 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

32. Annual report

- (1) The Board, as soon as practicable, but not later than six months after the end of each financial year of the Company, must prepare and submit to the Minister an annual report, comprising -
 - (a) all financial accounts and statements of the Company referred to in section 30, duly audited and certified by the auditor of the Company in respect of the financial year in question;
 - (b) the report of such auditor relating to such accounts and statements;
 - (c) an additional report on the activities of the Company during that financial year; and
 - (d) such other reports and particulars relating to the affairs of the Company as the Minister may require.
- (2) A copy of the annual report referred to in subsection (1) must be open to inspection, free of charge, by all policyholders, the State and creditors of the Company at the principal office of the Company referred to in section 8(1) at all times during normal office hours.
- (3) The Minister must table in the National Assembly the annual report submitted to him or her in terms of subsection (1), within 30 days from the date of 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 ordinary session.

33. Preservation of secrecy

- (1) A -
 - (a) director, including the managing director or employee of the Company;
 - (b) member of a committee of the Board;
 - (c) staff member of the Ministry responsible for finance, whether or not such staff member has been or is directly engaged in the performance of any function in terms of this Act;
 - (d) person referred to in section 15(8);
 - (e) person who has directly or indirectly engaged in the performance of any function in terms of this Act; or

- (f) person who has at his or her disposal information which he or she has obtained or to which he or she had access by virtue of his or her position as a person who has held any office or employment in terms of this Act,

may not disclose any information relating to the affairs of the Company acquired in the performance of his or her functions in terms of this Act, or in the course of his or her participation in the activities of the Company, or in the course of his or her employment and which is connected with the performance of any function in terms of this Act, except -

- (i) to any person who of necessity requires it for the performance of his or her functions in terms of this Act or his or her participation in the activities of the Company;
 - (ii) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act;
 - (iii) where such information which is required in terms of any law or as evidence in any court of law; or
 - (iv) with the prior written approval of the Minister, the chairperson of the Board or the managing director granted in respect of any matter which in the opinion of the Minister, the chairperson of the Board or the managing director is of a general nature and may be disclosed in the public interest.
- (2) A person who contravenes a provision of subsection (1) commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Part 4 – Short-term insurance for special risks

34. Termination of existing Agreement with NASRIA

- (1) Despite the provisions of the Agreement, the Agreement is deemed to be terminated with effect from the date this Act comes into operation.
- (2) With effect from the termination of the Agreement as contemplated by subsection (1), the State is released from its liabilities stipulated in section 1 of the Second Finance Act and the Agreement.

35. Premiums protected against creditors

- (1) Despite anything to the contrary contained in any other law, premiums received on behalf of the Company before or after the commencement of this Act by -
 - (a) an intermediary; or
 - (b) an insurer referred to in section 36 in connection with policies of insurance referred to in that section,

do not constitute an asset of such intermediary or insurer and may not be subject to attachment by any creditor other than the Company or the insurer referred to in that section.

- (2) For purposes of this section, intermediary means an insurance broker or reinsurance broker as defined in section 1 of the Short-term Insurance Act.

36. Restriction of insurance for special risks

- (1) Except if otherwise determined by the Minister by notice in the Gazette, a person except the Company, whether an insurer or insured, within or outside Namibia, may not enter into an insurance contract, in terms of which the insurer assumes any obligation in respect of property

situated in Namibia, including the territorial waters of Namibia, to indemnify, in terms of the policy issued by virtue of such contract, the owner of such policy against special risks, unless -

- (a) the insurer is a registered insurer in terms of the Short-term Insurance Act who has entered into an agreement with the Minister to conduct short-term insurance business for special risks, in which case the Minister will determine by notice in the Gazette which provisions of this Act apply to such insurer; and
 - (b) the insurer referred to in paragraph (a) has declared in the prescribed form that it is prepared to assume such an obligation or any part of such obligation or any other obligation in connection with such property, whether on the conditions contemplated in an insurance contract or on any other conditions.
- (2) Despite subsection (1), but subject to subsection (3), if the Registrar of Short-term Insurance is satisfied that no registered reinsurer can in any particular case provide special risks reinsurance cover on equitable terms, the Registrar may, upon application in the prescribed manner and form and on the recommendation of the Board grant exemption to any foreign reinsurer to issue a policy payable in Namibia in the currency of Namibia to provide reinsurance cover for short-term insurance for special risks.
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Part 5 – General provisions

37. Payment of certain taxes, duties, levies and other fees

Subject to this Act, the Company is not be liable to pay any taxes, duties, levies and other fees imposed or payable by or under any law and which are applicable to the Company until such time as the Company is restructured in terms of section 3(7).

38. Regulations

- (1) The Minister, after consultation with the Board, may make regulations relating to -
 - (a) the form of any notice, certificate or order required or permitted to be made or issued in terms of this Act and the manner in which any such notice or order may be given or served;
 - (b) any matter which in terms of this Act is required or permitted to be prescribed; and
 - (c) any matter in respect of which the Minister considers it necessary or expedient to prescribe in order to achieve the objects of this Act.
- (2) A regulation made under subsection (1) may provide for the creation of offences and imposition of penalties which may not exceed a fine of N\$ 500 000 or imprisonment for a period not exceeding two years, or both such fine and such imprisonment.

39. Staff rules and administrative directives by Board

The Board may make staff rules and issue administrative directives for the proper control and effective conduct of the affairs of the Company.

40. Liquidation or judicial management of Company

The Company may not be wound up or placed under judicial management except by or under the authority of an Act of Parliament.

41. Repeal of laws

Subject to the provisions of section 42(2), the Second Finance Act, 1987 (Act [No. 27 of 1987](#)) is repealed.

42. Savings and transitional provisions

- (1) Until the appointment and commencement of office of the Board, the board of directors of the Association must remain in office and perform the functions of the Association, which is deemed to be dissolved on the appointment and commencement of office of the Board in terms of this Act.
- (2) Any policy relating to short-term insurance business for special risks issued and any other thing done under any law repealed by section 40 and which could have been issued or done under this Act, is deemed to have been issued or done under this Act.
- (3) Any employee appointed in terms of any law prior to the coming into operation of this Act, is deemed to have been appointed under this Act.

43. Short title and commencement

- (1) This Act is called the Namibia Special Risks Insurance Association Act, 2017, and comes into operation on a date determined by the Minister by notice in the Gazette.
- (2) The Minister may under subsection (1) determine different dates for different sections.