

Namibia

Local Authorities Act, 1992

Commercialisation Regulations, 2001

Government Notice 39 of 2001

Legislation as at 15 November 2017

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1. Definitions

In these regulations, unless the context otherwise indicates, any word or expression defined in the Act has a corresponding meaning, and-

"**commercialise**" means the commercialising of any service, function or duty in accordance with regulation 3;

"**commercialised business**" means any service, function or duty commercialised in accordance with regulation 3;

"**pool**" means the input, subject to the conditions imposed by the Minister under regulation 2, at any time by a local authority council into a company conducting a commercialised business by way of the providing of labour or other services, or the supply of materials or equipment, free of charge, or the making of a cash payment or a loan to, or the entering into a lease agreement with, the company, including the furnishing of a guarantee in terms of section 30(1)(x) of the Act; and

"**the Act**" means the Local Authorities Act, 1992 (Act [No. 23 of 1992](#)).

2. Commercialisation by local authority council

- (1) Subject to these regulations or to any other law, a local authority council may commercialise in whole or in part, with the prior written approval of the Minister and subject to such conditions as the Minister may impose in writing in the approval, any service rendered, or duty exercised or function carried out by the local authority council.

- (2) The Minister may impose conditions under subregulation (1) which apply-
 - (a) to a local authority council specified in the approval granted under that subregulation; or
 - (b) in general to all local authorities in respect of any commercialisation in accordance with these regulations; or
 - (c) only to the commercialisation of a service, duty or function, and only to the local authority council, specified in the approval granted under that subregulation.

3. Form and manner of commercialisation

A local authority council may commercialise, subject to the conditions imposed by the Minister under regulation 2, any service rendered, function exercised or duty carried out by the local authority council, by means of-

- (a) the acquisition of all the shares in a company registered or to be registered in terms of the Companies Act, 1973 (Act [No. 61 of 1973](#)), or the registering of a company in which the local authority council is the sole shareholder, for the purpose of the commercialisation of such service, duty or function by the local authority council; and
- (b) the transferring and making over in writing to the company referred to in paragraph (a), subject to the conditions imposed by the Minister under regulation 2, of the power and authority of the local authority council to render, exercise or carry out the service, duty or function, to enable such company to render, exercise or carry out the service, duty or function so transferred or made over, subject to such conditions.

4. Alienation or encumbrance of shares and assets, and pooling of resources, services and property

- (1) A local authority council may-
 - (a) not alienate, encumber or dispose of any shares owned by it in, or any of the assets of, or the local authority council's interest in, a company conducting a commercialised business, without the prior written approval of the Minister, subject to the conditions the Minister may impose in the approval, and which approval may be granted only after consultation with the Minister of Trade and Industry;
 - (b) pool, subject to any conditions imposed by the Minister under regulation 2, any of its resources, services or property in a company conducting a commercialised business.
- (2) No member or staff member of a local authority council or other person referred to in section 94A(1)(c)(iv) of the Act may obtain any shares or interest in a company conducting a commercialised business without the prior written approval of the local authority council concerned, subject to such conditions as the local authority council may determine and which approval may only be granted after consultation with the Minister.

5. Amendment or alteration of statutes and articles of association, trust deed, shares or interest structure, or nature of operations, of company conducting a commercialised business

- (1) The statutes and articles of association of a company referred to in regulation 3 conducting a commercialised business, must provide that, or must be amended to provide that, irrespective of the voting power of the local authority council on the board of directors of the company, the statutes or articles of association may not be amended or the share structure altered, including the transfer of ownership in shares, or the nature of operations of the company conducting the commercialised business, including the risks pertaining thereto, may not be changed without the prior written approval of the local authority council, which approval may only be granted

in consultation with the Minister, and which approval must be entered into the minutes of the company concerned.

6. Audit of accounting records and financial statements of commercialised business

- (1) The Auditor-General must audit, *mutatis mutandis* in accordance with section 85 of the Act, the accounting records and financial statements of a company referred to in regulation 3 conducting a commercialised business.
- (2) The company referred to in subregulation (1) must submit to the Minister and to the local authority council concerned copies of the audited accounting records and financial statements referred to in that subregulation, together with a report by the Auditor-General relating to the audit conducted in accordance with that subregulation, within a period of 30 days after the completion of such audit.

7. Member or staff member of local authority council not to be employed by company

- (1) A company referred to in regulation 3 conducting a commercialised business may not employ a member or staff member of the local authority council concerned.
- (2) Nothing in subregulation (1) prevents a staff member of a local authority council from resigning from the services of such local authority council in order to take up employment with a company referred to in that subregulation.

8. General

Nothing in these regulations prevents a local authority council from acquiring or from registering a company in accordance with regulation 3 for the purpose of conducting a commercialised business, with objectives, powers, functions or purposes which are identical or similar to, or which are in competition or in conflict with, the objectives, powers, functions or purposes of any of the local authority council's own operations, if the conducting of the commercialised business by the company so acquired or registered by the local authority council, may serve to improve the efficiency or effectiveness of any of the own operations of the local authority council.