

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**BUSINESS AND INTELLECTUAL
PROPERTY AUTHORITY BILL**

(As read a First Time)

*(Introduced by the Minister of Industrialization, Trade and
Small and Medium Enterprises Development)*

[B. 8 - 2016]

BILL

To establish the Business and Intellectual Property Authority; to provide for its powers and functions; to provide for the Board of BIPA and its powers and functions; to consolidate certain offices; to amend certain laws; and to provide for incidental matters.

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY

1. Definitions
2. Objects of Act

PART 2 BUSINESS AND INTELLECTUAL PROPERTY AUTHORITY

3. Establishment of BIPA
4. Establishment of Registration Office
5. Functions and powers of BIPA
6. Policy directives by Minister
7. Board of BIPA
8. Constitution of Board
9. Disqualifications for appointment as member
10. Term of office of members
11. Vacation of office by members
12. Meetings of Board
13. Committees of Board
14. Rules by Board
15. Allowances payable to members

PART 3 PERSONNEL PROVISIONS

16. Chief Executive Officer
17. Staff members of BIPA

PART 4 FINANCIAL PROVISIONS

18. Funds of BIPA
19. Bank accounts of BIPA
20. Financial year and budget
21. Auditing
22. Annual report

PART 5 GENERAL PROVISIONS

23. Disclosure of interests by members and conduct of members and staff members of BIPA

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24. Reports by Registrar
 25. Prohibition of disclosure of confidential information
 26. Claim of confidentiality
 27. Limitation of liability
 28. Delegation of powers and assignment of functions
 29. Offences
 30. Regulations
 31. Transitional and savings provisions
 32. Amendment of laws
 33. Short title and commencement

SCHEDULE 1: Applicable Legislation

SCHEDULE 2: Amendment of Laws

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

PART 1
PRELIMINARY

Definitions

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

“applicable legislation” means a legislation listed in Schedule 1;

“BIPA” means the Business and Intellectual Property Authority established by section 3;

“Board” means the Board of BIPA constituted in terms of section 8;

“business” means a company and corporation;

“Chief Executive Officer” means the Chief Executive Officer of BIPA appointed under section 16;

“Close Corporations Act” means the Close Corporations Act, 1988 (Act No. 26 of 1988);

“committee” means a committee established under section 13;

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

“Companies Act” means the Companies Act, 2004 (Act No. 28 of 2004);

“corporation” means a corporation as defined in section 1 of the Close Corporations Act;

“copyright” means copyright as defined in section 1 of the Copyright and Neighbouring Rights Protection Act, 1994 (Act No. 6 of 1994);

“intellectual property” means the industrial property and copyright;

“Industrial Property Act” means the Industrial Property Act, 2012 (Act No. 1 of 2012);

“industrial property” means the industrial property as defined in section 1 of the Industrial Property Act;

“member” means a person appointed as a member of the Board under section 8;

“Minister” means the Minister responsible for trade;

“prescribed” means prescribed by regulation;

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

“Registrar” means the Registrar of business and industrial property who is the Chief Executive Officer;

“Registration Office” means the Registration Office established in terms of section 4;

“regulation” means a regulation made under section 30;

“regulatory authority” means an entity established in terms of legislation, responsible for regulating an industry or sector of an industry, and includes a ministry, office and agency;

“rule” means a rule made under section 14;

“staff member” means staff member of BIPA appointed under section 17; and

“this Act”, includes the regulations.

Objects of Act

2. The objects of this Act are to -
 - (a) facilitate economic growth and development to raise income and promote investment and create employment;
 - (b) enhance the efficient protection of the business and intellectual property in Namibia;
 - (c) facilitate and promote the efficient and effective registration of business and industrial property in Namibia;
 - (d) promote the conduct and use of business and intellectual property in Namibia;
 - (e) facilitate, streamline, simplify and harmonise the business and industrial property procedures, registrations, filings and searches to expedite economic growth and development; and
 - (f) enhance the efficient exchange and distribution of information.

PART 2
BUSINESS AND INTELLECTUAL PROPERTY AUTHORITY

Establishment of BIPA

3. (1) There is established a juristic person to be known as the Business and Intellectual Property Authority.

(2) BIPA -

(a) is the focal point for the registration of business and industrial property, and is responsible for the administration and protection of business and intellectual property; and

(b) must exercise and perform its powers and functions in an efficient and effective manner.

Establishment of Registration Office

4. The Board must, within BIPA, establish a Registration Office where business and industrial property are registered in accordance with this Act and the applicable legislation.

Functions and powers of BIPA

5. (1) The functions of BIPA are to -

(a) regulate and administer the registration of business and industrial property under the applicable legislation;

(b) consolidate various offices involved in the registration and administration of business and intellectual property in a manner provided for in this Act;

(c) register information, documents and data required to be lodged with, and maintained by, BIPA under the applicable legislation and to be responsible for the examination, safety and orderly custody of the information, documents and data;

(d) implement, promote and continuously enhance, advance electronic business and intellectual property information and transaction systems;

(e) maintain accurate, current and relevant information concerning business and intellectual property;

(f) promote, expedite and simplify the flow of information between BIPA and the business community, users of business and intellectual property, general public, regulatory authorities and institutions of the State;

(g) collect such fees and rates under this Act or the applicable legislation;

(h) promote education and awareness of laws relating to business and intellectual property and related matters;

- (i) advise the Minister, public sector and private sector on matters pertaining to business and intellectual property falling within the scope of BIPA;
 - (j) recommend to the Minister or any other minister or institutions of the State on matters relating to the amendment or making of any law in order to promote the efficient operation of business and intellectual property;
 - (k) perform any functions imposed on it by or under this Act, applicable legislation or necessary to achieve the objects of this Act and monitor compliance with this Act and the applicable legislation; and
 - (l) observe and adhere to the principles of good corporate governance and to oversee the implementation of such principles of good corporate governance by BIPA.
- (2) BIPA may -
- (a) organise outreach and awareness creation programmes to inform, educate and sensitise the public on matters relating to business and intellectual property;
 - (b) having regard to the regional and international developments in the field of business and intellectual property, interact with the regional and international bodies having similar objects;
 - (c) consult with a person, organisation or institution with regard to a matter relating to business and intellectual property and may -
 - (i) liaise with a regulatory authority on matters of common interest and exchange information with, and receive information from, any such regulatory authority pertaining to matters of common interest or a specific complaint or investigation; or
 - (ii) advise or receive advice from a regulatory authority;
 - (d) liaise with, and obtain membership of, international and regional business and intellectual property bodies having similar objects to that of BIPA and promote compliance with international or regional agreed instrument of which Namibia is a member.
- (3) In order to promote the enforcement of, and compliance with, this Act and the applicable legislation, BIPA may -
- (a) if requested by the parties to a dispute on any matter relating to this Act or the applicable legislation, facilitate voluntary resolution of disputes between the parties without intervening or adjudicating the disputes;
 - (b) receive or initiate complaints concerning alleged contraventions or non-compliances with this Act or the applicable legislation, evaluate such complaints and investigate such complaints;
 - (c) refer alleged offences to the relevant prosecuting or regulatory authority;
or

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- (d) do any other thing necessary to perform its functions under this Act or the applicable legislation.

Policy directives by Minister

6. For the purposes of promoting the objects of this Act, the Minister may issue general or specific policy directives to BIPA, not inconsistent with the provisions of this Act or applicable legislation.

Board of BIPA

- 7. The Minister must constitute the Board of BIPA in terms of section 8 -
 - (a) to govern, supervise and control the affairs of BIPA;
 - (b) to exercise the powers conferred on BIPA or the Board by or under this Act or the applicable legislation; and
 - (c) to perform such functions imposed on the Board by or under this Act or the applicable legislation.

Constitution of Board

8. (1) Unless a different number is determined in accordance with section 14(1)(a) of the Public Enterprise Governance Act, the Board consists of seven members appointed by the Minister of whom -

- (a) three persons are selected by the Minister;
- (b) four persons are from the persons who apply for appointment as members or are nominated in the manner contemplated in subsection (2),

who have appropriate and relevant expertise and experience in one or more of the following fields, namely, commerce, business, law, finance, economics and intellectual property.

(2) For the purposes of making an application or being nominated for appointment in terms of subsection (1)(b) -

- (a) the Minister must in at least two newspapers circulated widely through Namibia invite for applications or nominations to be submitted to the Minister in writing within the period specified in the invitation; and
- (b) if no nomination is submitted as contemplated in paragraph (a) within the period specified in the invitation referred to in that paragraph, the Minister, subject to this section, may appoint a suitable person as member of the Board.

(3) A person appointed as a member of the Board under paragraph (b) of subsection (2) is regarded as having been properly nominated for appointment as a member of the Board under paragraph (b) of subsection (1).

(4) The Minister must appoint a chairperson and a deputy chairperson of the Board from among the members of the Board.

(5) The Chief Executive Officer is an *ex officio* member with no voting right.

(6) The Minister must, as soon as possible after appointing the members of the Board in terms of subsection (1), make known in the *Gazette* -

- (a) the name of every person appointed as a member of the Board;
- (b) the period for which the appointment is made; and
- (c) the date from which the appointment takes effect.

Disqualifications for appointment as member

9. A person is disqualified from appointment as a member, if the person -

- (a) is not a Namibian citizens or permanent resident in Namibia;
- (b) is an unrehabilitated insolvent;
- (c) during a period of 10 years preceding the date of the proposed appointment as a member, has been convicted of any offence and sentenced to a period of imprisonment without the option of a fine;
- (d) has been removed from an office of trust as a result of improper conduct;
- (e) has been declared mentally ill by a competent court under any law; or
- (f) is a member of National Assembly, National Council, local authority council or regional council.

Term of office of members

10. A member holds office for a term of three years and is eligible for re-appointment at the expiration of that term, except for the Chief Executive Officer who is an *ex officio* member.

Vacation of office by members

11. (1) A member vacates office, if he or she -

- (a) becomes subject to any of the disqualifications referred to in section 9;
- (b) resigns from his or her office, after giving the Minister 30 days written notice of his or her intention to resign;
- (c) has been absent from three consecutive meetings of the Board without leave of the chairperson of the Board; or
- (d) is removed from office under subsection (2).

(2) The Minister, by notice in writing to a member, may remove a member from office before the expiry of his or her term, if the Minister is satisfied, after giving such member a reasonable opportunity to be heard, that the member -

-
- (a) is physically or mentally unfit or unable to effectively perform his or her functions as a member;
 - (b) neglects his or her functions as a member;
 - (c) has contrary to section 25 divulged information which has been entrusted to the member; or
 - (d) acts in a manner that prejudices or is in conflict with the functions of the Board or BIPA.

(3) If a member dies or vacates office before the expiration of his or her term of office, the Minister must appoint a person to fill the vacancy for the remainder of such term in accordance with section 8.

Meetings of Board

12. (1) The first meeting of the Board takes place at a time and place determined by the Minister, and the Board must hold at least four meetings a year at a time and place determined by the chairperson of the Board.

(2) The chairperson of the Board must convene a special meeting of the Board, to be held within 14 days after the date of receipt of a written request -

- (a) by the Minister; or
- (b) signed by at least three of the members,

and the request must clearly state the purpose for which the meeting is to be convened and the place, the agenda of the meeting and such other matters as may be so requested by the Minister or such members.

(3) The Minister may in writing request any matter pertaining to the functions of BIPA to be placed on the agenda of a meeting of the Board for consideration.

(4) At any meeting of the Board, the majority of all members form a quorum.

(5) If a quorum cannot be obtained at a meeting of the Board, the meeting is adjourned to a time and date determined by the chairperson of the Board.

(6) A decision of a majority of the members present and voting at a meeting of the Board constitutes a decision of the Board, and in the event of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.

(7) The chairperson of the Board must cause minutes to be kept of every meeting of the Board after having been approved by the members.

(8) The Board may invite any person to attend and participate in the deliberations of a meeting of the Board, but such person has no right to vote.

(9) The chairperson of the Board presides at meetings of the Board and in his or her absence the deputy chairperson and, in the absence of both the chairperson and the deputy chairperson, the members present must elect from their number a member to preside at the meeting.

(10) The Board may transact a business of urgent nature which cannot be kept pending till the next meeting by circulating, in a manner determined by the Board, the matter together with proposed solution, if any, among all members, and -

- (a) any resolution so circulated and approved by a majority of the members is as effective and binding as if such resolution had been passed at a meeting of the Board;
- (b) the business so transacted and the resolution so circulated and approved must be reported and recorded in the minutes of the next meeting of the Board; and
- (c) section 23(1), (2) and (3) applies with necessary changes to this subsection.

(11) A decision by the Board or an act performed on the authority of the Board is not invalid merely by reason of -

- (a) a vacancy in the membership of the Board; or
- (b) the fact that a person who is not entitled to attend a meeting of the Board was in attendance when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the required majority of the members present and entitled to sit as members and to vote.

Committees of Board

13. (1) The Board may establish any committee to exercise such powers or perform such functions as the Board may delegate or assign to such committee and -

- (a) must appoint a member to be the chairperson of a committee; and
 - (b) may appoint persons who are not members to be members of a committee.
- (2) The Board may at any time dissolve or reconstitute a committee.

Rules by Board

14. The Board may make rules relating to -

- (a) the convening and holding of, and procedure at, meetings of the Board or a committee of the Board;
- (b) the management of the affairs of BIPA and execution of its function;
- (c) any matter which in terms of this Act is required or permitted to be prescribed by rules; or
- (d) generally any other matter which the Board considers necessary or expedient to give effect to the objects of BIPA or the Board.

Allowances payable to members

15. (1) Members of the Board and members of the committees who are not in full-time employment of the State are paid such allowances as determined in terms of subsection (2).

(2) The Minister must, with the concurrence of the Minister responsible for finance, determine allowances payable to the members of the Board and committees in respect of -

- (a) meetings of the Board or of the committee attended by a member; and
- (b) reasonable expenses incurred by a member in connection with the exercise or performance of the powers or functions of the Board or committee.

(3) All expenditure related to the exercise and performance of the powers and functions of the Board are defrayed from funds of BIPA.

(4) Allowances determined under subsection (2) may differ according to the different offices held or functions performed by members contemplated in that subsection.

PART 3
PERSONNEL PROVISIONS

Chief Executive Officer

16. (1) The Board, with the approval of the Minister, must appoint a suitably qualified and experienced person as Chief Executive Officer of BIPA.

(2) The Chief Executive Officer -

- (a) is the Registrar of business and industrial property in terms of this Act and the applicable legislation;
- (b) subject to section 22(3) of the Public Enterprises Governance Act, is appointed for a term of five years and on such terms and conditions as the Board, with the approval of the Minister, may determine;
- (c) is eligible for re-appointment at the expiration of his or her term of office; and
- (d) may be removed from office before the expiry of his or her term of office in accordance with the terms and conditions of his or her contract of employment or the law.

(3) Subject to the direction and supervision of the Board, the Chief Executive Officer is responsible for the day-to-day management and administration of BIPA.

(4) If the office of the Chief Executive Officer becomes vacant or the Chief Executive Officer is for any reason unable to perform his or her functions, the Board may -

- (a) designate any suitable employee of BIPA; or
- (b) if circumstances so require, appoint a suitable person, after consultation with the Minister,

to act as Chief Executive Officer until the vacancy is filled or the Chief Executive Officer is able to perform his or her functions.

(5) A person designated or appointed under subsection (4) has the powers and performs the functions of the Chief Executive Officer.

(6) Subject to the direction and supervision of the Board, the Chief Executive Officer -

- (a) supervises the staff members of BIPA and exercises disciplinary powers over such staff members as may be outlined by personnel rules; and
- (b) is the accounting officer of BIPA, and is responsible for -
 - (i) the proper control and management of the assets of BIPA;
 - (ii) the effectiveness and efficiency of BIPA;
 - (iii) all income and expenditure of BIPA, including keeping complete and accurate accounts of all money received or expended by BIPA in accordance with prevailing international financial reporting standards so as to give a true reflection of the transactions and financial situation of BIPA and to represent accurately the state of affairs and business of BIPA;
 - (iv) receiving of all fees payable to BIPA and other revenue collected by BIPA under this Act or applicable legislation, and the discharging of liabilities of BIPA; and
 - (v) the proper and diligent implementation of and compliance with the Public Enterprises Governance Act, this Act and the applicable legislation.

Staff members of BIPA

17. (1) The Chief Executive Officer -

- (a) must draw up a personnel structure of BIPA for the approval of the Board;
- (b) may appoint such persons as approved on the personnel structure of BIPA as he or she may consider necessary to perform the functions of BIPA; and
- (c) determines the remuneration and other terms and conditions of service of the staff members with the approval of the Board.

(2) BIPA may enter into agreement with any person to perform any act or provide any service for or on behalf of BIPA in respect of any matter related to the functions of BIPA.

PART 4
FINANCIAL PROVISIONS

Funds of BIPA

- 18.** (1) The funds of BIPA consist of -
- (a) money appropriated by Parliament for the purpose of BIPA;
 - (b) fees and penalties received under this Act and the applicable legislation for the benefit of BIPA, including any interest on unpaid amounts;
 - (c) charges in respect of services rendered by BIPA in the performance of its functions under this Act or applicable legislation;
 - (d) interest or dividends earned on an investment made in terms of subsection (5);
 - (e) money borrowed with the approval of the Minister in agreement with the Minister responsible for finance;
 - (f) money received by way of donations or grants from a source in Namibia, and subject to the approval of the Minister in agreement with the Minister responsible for finance, from any source outside Namibia;
 - (g) money obtained through the sale of -
 - (i) publications prepared by or for BIPA;
 - (ii) reference material, data and information; and
 - (h) other money which may accrue to BIPA from any other source in Namibia.
- (2) BIPA must manage its funds in accordance with sound principles of financial management and by observing the measures implemented to protect the liquidity of BIPA.
- (3) Subject to section 20(2), the funds of BIPA are used -
- (a) to pay the administrative expenses of BIPA;
 - (b) to fund the costs of activity of BIPA;
 - (c) to pay remunerations and allowances payable by BIPA and such other expenses incurred by BIPA in the performance of its functions; or
 - (d) for any other expenditure provided for in the budget of BIPA.
- (4) Money received by way of a donation for the benefit of BIPA may be administered on such conditions as may be agreed on between the donor and BIPA.
- (5) Any money standing to the credit of BIPA and not required for immediate use or as a reasonable operating balance may be invested by BIPA, subject to the consideration of the determination of the budget for the ensuing financial year.

(6) An unexpended balance at the end of a financial year of BIPA is carried forward as a credit to the ensuing financial year.

Bank accounts of BIPA

19. (1) BIPA must open and maintain such bank accounts at -
- (a) one or more banking institutions in Namibia registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998); or
 - (b) the Post Office Savings controlled and managed by Namibia Post Limited established by the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992),

as are necessary for the performance of the functions of BIPA.

- (2) The Chief Executive Officer must ensure that -
- (a) all money received by or on behalf of BIPA is deposited into its bank account as soon as practicable after receipt;
 - (b) a payment by or on behalf of the BIPA is made from its bank account; and
 - (c) money is not withdrawn, paid or transferred from its bank account without the approval of the Board.

(3) In furtherance of subsection (2), the Board must, whether by means of internal procedures or by its rules, determine prudent financial procedures, including internal control measures and mechanisms, to guard against fraud and the improper administration of its funds.

Financial year and budget

20. (1) The financial year of BIPA ends on 31 March each year.

(2) BIPA may not incur an expense, except in accordance with a budget drawn up in terms of subsection (3).

(3) Every financial year, the Board must cause a budget to be drawn up for the ensuing financial year and submit it to the Minister for approval.

(4) The budget drawn up in terms of subsection (3) must contain particulars regarding the expense of BIPA as referred to in section 18(3).

(5) If the Board considers it necessary during the course of a financial year, it may submit supplementary estimates of expense of BIPA to the Minister for approval.

Auditing

21. (1) The Board, with the consent of the Auditor-General, must appoint a person registered as an auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), to annually audit its accounting records and financial statements and submit an audited report to BIPA.

(2) The auditor referred to in subsection (1) audits the accounting records and financial statements of BIPA subject to such directives as the Auditor-General may issue to such auditor.

(3) Not later than four months after the end of each financial year the Board must submit audited accounting records and financial statements together with a report referred to in subsection (1) to the Auditor-General who review and report on the financial position of BIPA.

Annual report

22. (1) Not later than six months after the end of each financial year, the Board must prepare and submit to the Minister an annual report relating to such financial year.

- (2) The annual report referred to in subsection (1) must contain -
- (a) particulars of all activities of BIPA during the financial year under review;
 - (b) audited financial statements of BIPA contemplated in section 21(3), including a statement of income and expenditure, a balance sheet and the report contemplated in subsection (1); and
 - (c) such other matters as the Minister may require or as may be required under any other law.

(3) The Minister must table the annual report in the National Assembly within 30 days of receipt of the audited report if the National Assembly is in session, or if the National Assembly is not in session within 14 days after the commencement of its next session.

PART 5 GENERAL PROVISIONS

Disclosure of interests by members and conduct of members and staff members of BIPA

23. (1) If a member of the Board or a committee has an interest, whether direct or indirect, which precludes such member from performing the function or exercising the power in a fair, unbiased or proper manner such member may not -

- (a) deliberate; or
- (b) vote,

on any matter which is the subject of consideration at a meeting of the Board or committee, or participate in the meeting.

(2) If prior to or at any stage during a meeting of the Board or committee a member thinks that he or she -

- (a) has an interest;

- (b) may have an interest,

which may cause a conflict of interest to arise, or any other member so thinks, the member must -

- (i) promptly inform the Board; and
- (ii) leave the meeting to enable the remaining members to discuss that interest and to determine whether the member is precluded from participating in such meeting by reason of a conflict of interests.

(3) A disclosure of interest by a member under subsection (2) and a decision taken by the members under that subsection at a meeting is recorded in the minutes of that meeting.

(4) A member of the Board or committee may not make use of, or profit from, a confidential information obtained as a result of exercising or performing a power or function as a member.

- (5) The Chief Executive Officer or other staff members of BIPA may not -

- (a) participate in an investigation, proceedings or decision concerning a matter in respect of which the Chief Executive Officer or staff member have interest; or

- (b) make use of, or profit from, confidential information obtained as a result of exercising or performing a power or function as a Chief Executive Officer or staff member.

(6) A person who contravenes subsection (1), (2), (4) or (5) commits an offence and is liable to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Reports by Registrar

24. The Registrar must, during meetings of the Board or within a period as may be determined by the Board, report to the Board on -

- (a) the issue of the registration of business and industrial property registered by the Registrar; or
- (b) any matter that the Registrar may wish to bring to the attention of the Board pertaining to any function performed or power exercised by the Registrar under this Act or applicable legislation.

Prohibition of disclosure of confidential information

25. A member of the Board or committee, staff member of BIPA or any other person contracted by BIPA, may not disclose to any other person confidential information acquired in the exercise or performance of a power or function under or in terms of this Act or an applicable legislation whether before, during or after his or her involvement in the affairs of BIPA, except -

- (a) for the purposes of the exercise or performance of his or her powers or functions under or in terms of this Act or an applicable legislation; or

- (b) when required to do so by any other law or a court of law.

Claim of confidentiality

26. (1) When submitting information to BIPA or to an inspector, a person may, in so far as it is provided for in applicable legislation or any other law, claim that all or part of that information is confidential.

(2) A person claiming confidentiality as contemplated in subsection (1) must submit a written statement explaining why the information is confidential.

(3) BIPA must -

- (a) consider a written statement submitted under subsection (2) in relation to a claim made under subsection (1); and
- (b) as soon as practicable, decide on the confidentiality of the information and access to that information and provide written reasons for the decision.

(4) Subsections (1), (2) and (3) are subject to any provision dealing with confidentiality, disclosure or secrecy as contained in the applicable legislation or a court order.

Limitation of liability

27. A -

- (a) member of the Board or committee;
- (b) staff member of BIPA; or
- (c) person or body contracted by BIPA,

is not personally liable for damage or loss arising out of an act or omission committed in good faith by such member, staff member, person or body while exercising or performing the powers or functions under or in terms of this Act or an applicable legislation, except if such damage or loss was caused as a result of -

- (i) the gross negligence; or
- (ii) dishonesty or unlawful conduct,

by such member, staff member, person or body.

Delegation of powers and assignment of functions

28. (1) The Board, in writing and on such conditions as it may determine, may delegate a power or assign a function conferred or imposed on BIPA or the Board by or under this Act or applicable legislation to a committee, the Chief Executive Officer or any staff member of BIPA, other than the power to -

- (a) establish a committee under section 13;

- (b) appoint the Chief Executive Officer under section 16; or
- (c) make rules under section 14.

(2) The Chief Executive Officer, in writing and on such conditions as he or she may determine, may delegate or assign a power or function conferred or imposed on the Chief Executive Officer by or under this Act or an applicable legislation to any staff member of BIPA, except the power to appoint staff members of BIPA under section 17.

- (3) The Board or the Chief Executive Officer -
 - (a) is not divested of a power delegated or function assigned under this section; and
 - (b) may, at any time, without prejudice of a right, amend or withdraw a decision made by virtue of the power so delegated.

Offences

- 29.** A person who -
- (a) hinders, obstructs or improperly attempts to influence the Board, a member of the Board or a committee, the Chief Executive Officer or an employee of BIPA when exercising or performing a power or function conferred or imposed by or under this Act or an applicable legislation;
 - (b) furnishes or gives false or misleading information to BIPA;
 - (c) does anything calculated to improperly influence the Board, the Chief Executive Officer or an employee of BIPA concerning a matter connected with BIPA; or
 - (d) contrary to section 25, discloses confidential information concerning the affairs of BIPA obtained in the exercise or performance of a power or function conferred or imposed by or under this Act or an applicable legislation,

commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Regulations

30. The Minister, on the recommendation of the Board, may make regulations relating to -

- (a) the charging of fees for any act done or provision of any service rendered under this Act or applicable legislation, where no specific provision is made for the charging of such fees under the applicable legislation; or
- (b) any matter which in terms of this Act is required or permitted to be prescribed or generally any other matter which the Minister considers necessary or expedient to give effect to the objects of this Act.

Transitional and savings provisions

31. (1) Subject to this section, the Minister -
- (a) with the concurrence of the Minister responsible for finance; and
 - (b) on such conditions as the Minister may determine,

must, by notice in the *Gazette*, transfer to BIPA such agreements, assets, liabilities, rights or obligations of the State which relate to or are connected with the functions of BIPA, with effect from a date specified in such notice.

(2) Despite any law to the contrary, BIPA is vested with the ownership of the assets and rights, and is charged with the liabilities and obligations, transferred to it under subsection (1), with effect from the date of such transfer.

(3) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to BIPA in terms of subsection (1), is sufficient proof that the asset, right, liability or obligation so described is vested in BIPA.

- (4) Upon submission of the certificate referred to in subsection (3) to -
 - (a) the Registrar of Deeds; or
 - (b) to any other person in charge of any other office where a register or record of ownership of or entitlement to an asset or right described in such certificate is being kept,

the Registrar or such person must make such entries in or on any relevant register, title deed or other document in his or her office as may be necessary to effect the transfer in the name of BIPA.

(5) BIPA is substituted for the State as a contracting party in respect of any agreement transferred to BIPA in terms of subsection (1).

(6) The value of assets and liabilities transferred to BIPA in terms of subsection (1) is determined by the Minister after consultation with the Minister responsible for finance.

(7) Despite any law to the contrary, no duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of assets or rights is payable in respect of the transfer of assets or rights by the State to BIPA in terms of subsection (1).

(8) A person who at the commencement of this Act has been appointed under an applicable legislation as Registrar, Deputy Registrar or Assistant Registrar is deemed to have been appointed under the corresponding provision of this Act.

- (9) Despite any other law to the contrary, the Minister -
 - (a) with the consent of the Prime Minister; and
 - (b) in accordance with an agreement concluded by the Minister and BIPA,

may at the commencement of this Act transfer to BIPA any staff member of the Ministry currently performing the functions of BIPA, subject to the consent of the staff member.

Amendment of laws

32. The laws set out in Schedule 2 are amended to the extent indicated in that Schedule.

Short title and commencement

33. (1) This Act -

- (a) is called the Business and Intellectual Property Authority Act, 2016; and
- (b) commences on a date determined by the Minister by notice in the *Gazette*.

(2) The Minister may, under subsection (1), determine different dates in respect of different provisions of this Act.

SCHEDULE 1

APPLICABLE LEGISLATION (Section 1)

1. Close Corporations Act, 1988 (Act No. 26 of 1988)
2. Companies Act, 2004 (Act No. 28 of 2004)
3. Copyright and Neighbouring Rights Protection Act, 1994 (Act No. 6 of 1994)
4. Industrial Property Act, 2012 (Act No. 1 of 2012)

SCHEDULE 2

AMENDMENT OF LAWS (Section 32)

The laws set out in this Schedule are amended to the extent indicated:

1. Close Corporations Act, 1988 (Act No. 26 of 1988)

The Close Corporations Act, 1988 is amended -

- (a) in section 1 -
 - (i) by the insertion after the definition of “association agreement” of the following definitions:

“BIPA” means the Business and Intellectual Property Authority established by section 3 of BIPA Act;”;

“BIPA Act” means the Business and Intellectual Property Authority Act, 2016 (Act No.....of 2016);”;

- (ii) by the substitution for the definition of “Registrar” of the following definition:

“Registrar” means the Registrar of business and industrial property as defined in section 1 of BIPA Act;”;

- (iii) by the substitution for the definition of “Registration Office” of the following definition:

“Registration Office” means the Registration Office as defined in section 1 of BIPA Act;”;

- (b) in section 3 by the substitution for subsection (1) of the following subsection:

“(1) For the purposes of this Act, the corporations are registered at the Registration Office.”;

- (c) by the substitution for section 4 of the following section:

“Registrar

4. The Registrar may in writing delegate any of the powers and entrust any of the duties assigned to him by this Act to any staff member of BIPA.”;

- (d) in section 6 -

- (i) by the substitution for subsection (1) of the following subsection:

“(1) The payment of any fee, additional fee or other money payable to the Registrar in terms of this Act shall be effected in the prescribed manner or in other manner as the Registrar may direct.”;

- (ii) by the substitution for subsection (4) of the following subsection:

“(4) Any fee and other money payable in terms of this Act is for the account of BIPA and any outstanding fees or other money which is due and payable are debts due to BIPA and may be recoverable by the BIPA in any competent court.”; and

- (e) the repeal of section 11.

2. Amendment of Companies Act, 2004 (Act No. 28 of 2004)

The Companies Act, 2004 is amended -

- (a) by the substitution for the word “Minister” of the word “Board” wherever it appears in the Act, except in sections 13, 15, 98(7), (16) and (29), 147(6), 336(1) and 452; and

- (b) by the substitution of the expression “Registration Office” for the expression “Companies Registration Office” wherever it appears in the Act.;

- (c) in section 1 -

- (i) by the insertion after the definition of “auditor” of the following definitions:

“BIPA” means the Business and Intellectual Property Authority established by section 3 of BIPA Act;”;

“BIPA Act” means the Business and Intellectual Property Authority Act, 2016 (Act No.of 2016);”;

“Board” means the Board of BIPA constituted under section 8 of BIPA Act;”;

- (ii) by the substitution for the definition of “Registrar” of the following definition:

“Registrar” means the Registrar of business and industrial property as defined in section 1 of BIPA Act;”;

- (iii) by the insertion after the definition of “Registrar” of the following definition:

“Registration Office” means the Registration Office as defined in section 1 of BIPA Act;”;

- (d) in section 4 by the substitution for subsection (1) of the following subsection:

“(1) For the purposes of this Act, the companies are registered at the Registration Office.”;

- (e) in section 6 by the deletion of subsection (1), (2) and (3);

- (f) in section 9 by the substitution for subsection (3) of the following subsection:

“(3) Any fees, additional fees, annual duty and any other moneys payable under this Act to the Registrar are for the account of BIPA and any outstanding fees or other money due and payable are debt due to BIPA and are recoverable by BIPA in any competent court.”; and

- (g) by the repeal of section 16, 17, 18 and 19.”.

3. Amendment of the Copyright and Neighbouring Rights Protection Act, 1994 (Act No. 6 of 1994)

The Copyright and Neighbouring Rights Protection Act, 1994 is amended -

- (a) by the substitution for the word “Minister” of the word “Board” wherever it appears in the Act, except in sections 1, 61, 63 and 69;

- (b) by the insertion after the definition of “author” of the following definitions:

“BIPA” means the Business and Intellectual Property Authority established by section 3 of BIPA Act;”;

“BIPA Act” means the Business and Intellectual Property Authority Act, 2016 (Act No.of 2016);”;

“Board” means the Board of BIPA constituted under section 8 of BIPA Act;”;

- (c) by the substitution of the definition “Minister” of the following definition:

“Minister” means the Minister responsible for trade;”;

- (d) by the substitution of the following paragraph for paragraph (b) of subsection (2) of section 56:

“(b) the application fee as determined by BIPA; and”;

- (e) by the deletion of paragraph (d) of section 61;

- (f) by the substitution of the following section for section 62:

“Recommendations by BIPA

62. BIPA may make recommendations to the Minister in regard to any amendments to this Act and shall advise the Minister on any matter referred to it by the Minister.”.

4. Amendment of the Industrial Property Act, 2012 (Act No. 1 of 2012)

The Industrial Property Act, 2012 is amended -

- (a) by the substitution of the word “Board” for the word “Minister” wherever it appears in the Act, except in sections 1, 85, 212, 215, 218, 219, 227, 234, 236 and 241;

- (b) in section 1 -

- (i) by the insertion after the definition of “ARIPO” of the following definitions:

“BIPA” means the Business and Intellectual Property Authority established by section 3 of BIPA Act;”;

“BIPA Act” means the Business and Intellectual Property Authority Act, 2016 (Act No.of 2016);”;

“Board” means the Board of BIPA constituted under section 8 of BIPA Act;”;

- (ii) by the deletion of the definitions of “Office” and “official”;
- (iii) by the substitution of the expression “Registration Office” for the expression “Office” wherever it appears in the Act;
- (iv) by the substitution of the expression “staff member” for the expression “official” wherever it appears in the Act;
- (v) by the substitution of the following definition for the definition of “Registrar”:

“Registrar” means the Registrar of business and industrial property as defined in section 1 of BIPA Act;”;

- (vi) by the insertion after the definition of “Registrar” of the following definition:

“Registration Office” means the Registration Office as defined in section 1 of BIPA Act;” and

- (vii) by the substitution of the following definition for the definition of “staff member”:

“staff member” means a staff member of BIPA as defined in section 1 of PIBA Act;”;

- (c) by the substitution of the following section for section 2:

“Registration of industrial property

2. For the purposes of this Act, the Registration Office is responsible for all functions relevant to the registration, recordal, maintenance and administration of industrial property rights as provided for in this Act.”;

- (d) by the repeal of section 4;

- (e) by the substitution of the following section for section 11:

“Limitation of liability

11. The Registrar or staff member is not personally liable for damage or loss arising out of an act or omission committed in good faith, while exercising or performing the powers or functions under or in terms of this Act, except if such damage or loss was caused as a result of the gross negligence, dishonesty or unlawful conduct by the Registrar or staff member.”;

- (f) by the insertion after section 238 of the following section:

“Fees

238A. Any fees and other money payable in terms of this Act are for the account of BIPA and any outstanding fees or any other money due and payable to BIPA are debt due to and recoverable by BIPA in any competent court.”.
