



REPUBLIC OF NAMIBIA

MINISTRY OF PUBLIC ENTERPRISES

Ministerial Statement

September 2015

MINISTRY OF PUBLIC ENTERPRISES

MINISTERIAL STATEMENT BY HON LEON JOOSTE ON 30
SEPTEMBER 2015

Honorable Speaker,

On Thursday 24 September 2015 the amended Public Enterprises Governance Act (PEGA) was finally gazetted. During my motivation I mentioned that this amended legislation will be a temporary legal solution to enable the Ministry of Public Enterprises (MOPE) to become functional. I also said that in spite of the temporary nature of this legislation, we will nevertheless be implementing it in its' current form. The MOPE has used the first six months of its existence to prepare for this implementation while addressing various immediate challenges at the same time. We have also virtually finalized a database to capture the status of compliance of PEs to assist us now and in future.

The purpose of this Ministerial Statement is to inform Parliament of the MOPE's first salvo of remedial actions to address the serious non-compliance of a number of PEs. Hon Speaker, I sadly have to confess that I am astounded by the poor quality of governance in most PEs. My expectation is that by us addressing the various non-compliance issues, we will expose a number of financial and operational deficiencies which once rectified should yield immediate results.

The first item we will address is the matter of Governance Agreements with Boards as per Section 17 of the PEGA which read as follows: "The portfolio Minister must, within one month of being constituted, and with due regard to any directives laid down by the Minister under section 4, enter into a written governance agreement with the board of a Public Enterprise in relation to -

- (a) the State's expectations in respect of the Public Enterprise's scope of business, efficiency and financial performance, and achievement of objectives;
- (b) the portfolio Minister's obligations in relation to any function conferred or imposed by the establishing Act of the Public Enterprise;
- (c) the principles to be followed by the Public Enterprise for business planning;
- (d) the measures which are necessary to protect the financial soundness of the Public Enterprise;
- (e) key performance indicators in terms of which the Public Enterprise's performance will be evaluated;
- (f) the structure of the business and financial plan;
- (g) the principles to be followed at the end of each financial year in respect of any surplus in the accounts of the Public Enterprise; and
- (h) any other matter relating to the performance of the Public Enterprise's functions under any law.

(2) The portfolio Minister and the board of a Public Enterprise may in writing amend the governance agreement from time to time.

(3) A copy of the governance agreement must be open to inspection by the public at the head office of the Public Enterprise during business hours.

The second matter deals with the Performance Agreements with individual Board members as per Section 18 which read as follows: "The portfolio Minister must, within one month of appointing a person as a member of a board, enter into a performance agreement with such member, with due regard to any directives laid down by the Minister under section 4.

(2) Without limiting the directives which may be laid down by the Minister under section 4 in relation to performance agreements, the following conditions apply to every member of the board of a Public enterprise as if they were contained in the relevant performance agreement entered into by that member in terms of subsection (1), namely:

(a) The member must at all times act honestly in the performance of the functions of his or her office;

(b) the member must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions;

(c) the member, including after he or she has ceased to be a member of the board of a State-owned enterprise, must not make improper use of information acquired by virtue of his or her position as such a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the State-owned enterprise;

(d) the member must not make use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or cause detriment to the Public enterprise.

④ (3) If a person contravenes a condition referred to in subsection (2) or any other condition of the performance agreement entered into by him or her in terms of subsection (1), the portfolio Minister, in the name of the relevant Public enterprise, may recover from the person as a debt due to the Public enterprise by action in a competent court:

a) if that person, or any other person, made a profit as a result of the contravention, an amount equal to the profit;

(b) if the State-owned enterprise has suffered any damage or loss as a result of the contravention, an amount equal to that damage or loss.

(4) Subsections (2) and (3) are applicable in addition to, and not in derogation of, any other law relating to the criminal or civil liability of the member of a board and do not prevent the institution of any criminal or civil proceedings in respect of such liability.

(5) A contravention referred to in subsection (3) by a member of the board of a State-owned enterprise, constitutes a

ground for the removal of that member from his or her office by the portfolio Minister.

The third item we will address deals with the critical requirement of PEs to submit Business and Financial plans as per Section 19 of the Act. "Every Public Enterprise must annually, at least 90 days before the commencement of its next financial year, submit a business and financial plan to the portfolio Minister.

(2) The business and financial plan of a Public Enterprise must encompass all the businesses and activities, including investments, of the Public Enterprise and its wholly-owned subsidiaries, if any.

Section 20 then deals with the Approval^{of} the annual budget of PEs which once submitted allow for the Minister of PEs and Portfolio Minister to make comments and request amendments if necessary. The completed, approved budget must then be submitted to the Minister of PEs and the Portfolio Minister within 2 months after commencement of the financial year-end. Section 20.(4) says " A Public Enterprise must not incur any expenditure except in accordance with an estimate of expenditure approved under this section.."

It is clear that adherence to the above-mentioned will result in a controlled and predicable corporate process where the Shareholder will not be caught off-guard as has become the norm. This will also result in a more coordinated and accurate budgeting process to aid the Minister of Finance.