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Commentary on Employment Services Act 8 of 2011 (Namibia): Selected Provisions of the Act

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ABSTRACT

Employment services, along with other active labour market policies, are essential in today's labour market to help businesses, improve employability and job retention, and link job searchers and employers. Both private employment agencies and public employment services assist people and businesses in developing resilience against labour market shocks as a result of various crises and technological breakthroughs that are reshaping the labour market. Employment services are essential to the smooth operation of inclusive, productive labour markets. They help people deal with job loss and career transitions, and they also help businesses find talent and retrain employees. Because they help businesses, improve employability and job retention, and connect job seekers and employers, employment services and other active labour market policies are crucial in today's labour market to support national economies. Because of advancements in technology and a number of crises, public employment services and commercial employment agencies help people and businesses prepare for and adjust to changes in the labour market. A functional, inclusive, and well-functioning labour market depends on employment services. In addition to helping businesses identify talent and retrain staff, they assist individuals in coping with job loss and career transitions. This paper thus seeks to provide a commentary on Employment Services Act 8 of 2011 (Namibia): Selected Provisions of the Act.

Keywords: *employees, employers, labour market, boards, employment, employment services.*

I. INTRODUCTION

Employment services and other active labour market policies are essential in today's labour market to bolster national economies since they facilitate the connection between job seekers and employers, increase employability and job retention, and assist businesses.²

Public employment services and private employment agencies assist individuals and businesses

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² Employment services <https://www.ilo.org/topics/employment-promotion/employment-services> accessed 07 June 2024.

in adapting to and preparing for labour market upheavals as a result of technology improvements and numerous crises. Employment services are the cornerstone of effective, inclusive, and smoothly operating labour markets. They help individuals deal with job loss and career transitions, as well as help companies find talent and retrain employees.³

The Employment Service Convention 88 of 1948 as an international organisation calls on member states of the International Labour Organisation for which this Convention is in force to maintain or ensure the maintenance of a free public employment service.⁴ This is essential as it ensures that the objectives of employment services shall be implemented and enjoyed by all persons in the member states irrespective of social status or class. The Convention, furthermore places a duty on the member states to ensure that the best possible organisation of the employment market as an integral part of the national programme prevails for the achievement and maintenance of full employment and the development and use of productive resources.⁵ This should be achieved through co-operation where necessary with other public and private bodies concerned.⁶ Namibia has as yet not ratified the Employment Services Convention 88 of 1948. It could be beneficial to the labour market and employment sector for Namibia to ratify it.

The Employment Services Act was enacted in Namibia in 2011. The primary objective of the Act is to provide for the establishment of the National Employment Service; to impose reporting and other obligations on certain employers and institutions; to provide for the licensure and regulation of private employment agencies.⁷ The Act consist of 32 section and is divided into 5 parts. The first contains introductory provisions. The Part establishes the National Employment Service. The key the in the third part is designated employers and institutions. Part 4 outlines provisions relating to private agencies and part 5 deals with the appointment and powers of employment officers. The scope of this paper is limited to Part 1 and Part 2 of the Act. The establishment of a national employment service is very important in a developing country such as Namibia. Sustainable development goal (SDG 8) recognizes the need to promote inclusive and sustainable economic growth, employment and decent work for all. Hence, employment creation is vital for economic growth and transformation. NDP 4.

It is commendable that Part 1 of the statute sets out and explains certain key words that is used in the statute. This gives user an understanding of how the terms are used in the statute. The

³ Ibid.

⁴ Article 1 (1) of Employment Service Convention 88 of 1948.

⁵ Article 1 (2) of Employment Service Convention 88 of 1948.

⁶ Ibid.

⁷ Preamble of the Employment Services Act 8 of 2011.

ordinary grammatical meaning of a word may not necessarily suffice in the statute, though this is the approach used in the absence of any explanation. In other words, where the statute does not expressly explain or provide context to what a specific phrase or term mean as used in the statute, the reader may rely on the ordinary grammatical meaning of the word. Basically, there are various approaches to interpreting a statute. The first is the literal approach. This approach calls for the interpreter to focus primarily on the literal meaning of the provision to be interpreted.⁸ Thus, if the meaning of the words are clear, it should be put into effect.⁹ However,, if the meaning of the words is vague ambiguous or if such a strict interpretation could lead to absurdity, then the courts is entitled to depart from the literal or plain meaning in order to circumvent such absurdity.¹⁰ The court much then in such as case use secondary aids to interpretation to find the true intention of the legislature. The positivist approach suggest that the will of the people should prevail. In other words, the law is regarded as a product of the social fact and sovereign will. The judges role in terms of the positivist approach is to give effect to the rights established by the adoption of the legal text.¹¹ The third approach is the contextual approach. In outlining the essence of contextual approach, there is a need to rely on the reasoning of the court in the case of *Prinsloo v Van der Linde*¹² the court said

“ we are emerging from a period in our history during which the humanity of the majority of our inhabitants of this country was denied. They were treated as not having inherent worth; as objects whose identities could be arbitrarily defined by those in power rather than as persons of infinite worth. In short, they were denied recognition of their inherent dignity.”

Contextual approach, therefore requires the interpreter to pay attention to the context prevailing at the time when the legislative text is to be interpreted. The context, essential in Namibia will require looking at socio-economic conditions and the circumstances Namibia is facing at the time legal text is to be interpreted.

These are the possible approaches that can be employed in interpreting any provision of the Act where the meaning of the statute is not properly provided for in the Act itself. It is however worth noting that the drafters of this Act like any other Act has put in efforts to provide a definitional section to explain some of the key terms or phrases to give direction or guidance to the reader of the Act.

⁸ Botha, C (2005) *Statutory Interpretation: an introduction for students*, 4th edition, Juta and Co.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Atudiwe, A. (2013) “Courts, Constitutions and interpretation in Africa: A focused inquiry into comparative constitutional interpretation in Ghana and Nigeria” *Malawi Law Journal*, Vol 7. pp57-94

¹² 1997 3 SA 1012 (CC).

II. ESTABLISHMENT OF THE NATIONAL EMPLOYMENT SERVICES

Section 2 of the Act provides for the establishment of the National Employment Service. The purpose of the National Employment Service is to provide for the labour market services for the purpose of achieving full, productive and decent employment in Namibia. The National Employment Service in Namibia consists of two entities namely, the Employment Services Board; and the Employment Services Bureau.¹³

Namibia is a developing country, faced with inequalities and the huge gap between the rich and the poor. Though Namibia has attained independence in 1990, masses of the people still lived in poverty. This necessitated the enactment of the Employment Services Act and to provide for the establishment of the National Employment Services. The establishment of the National Employment Services is to be seen as the government's response to address issues experienced in the Labour market and space that ultimately lead to inequalities, poverty, joblessness and many other associated problems. Namibia is not the only country in the world that has established the National Employment Service in the world or in Africa for that matter. This is a global trend.

The Employment Convention 122 of 1964 calls on Member states (of which Namibia is a Member state) to create a policy at national level designed to promote full, productive and freely chosen employment. According to the Employment Convention, the purpose of the said policy is to stimulate economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment. This requires Member countries to keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives aforementioned objectives. Furthermore, the Member states are required to take such steps as may be needed, including when appropriate the establishment of programmes, for the application of these measures.¹⁴

Namibia in establishing the National Employment Services simply does not only respond to the global trend, but complies with international standards as required by the Employment Convention and upholds its constitutional mandate to enact legislation and establish institutions aimed at improving the welfare of Namibians.¹⁵

The term "National Employment Service" refers to government organizations that design and execute government's labour market policies with the aim to assist worker entry into the labour

¹³ Section 2 (a) and (b) of the Act.

¹⁴ Article 1 and 2 of Employment Convention 122 of 1965.

¹⁵ Article 95 (a) of the Namibian Constitution.

market, facilitate labour market changes, and to provide for activities to help the labour market adjust to, and cope with effects of global economic changes.

In Namibia, the National Employment Service is divided into two institutions, namely the Employment Services Board and the Employment Services Bureau. These two institutions have the same mandate, which is to facilitate the enforcement of the aim of the National Employment Service, but their functions are different. A board operates as a quasi-judicial or quasi-legislative functions, whereas the bureau, is vested with administrative power and performs administrative functions.

III. EMPLOYMENT SERVICES BOARD

The Employment Services Board consists of 14 individuals, appointed by the Minister. These 14 individuals must consists of

(a) the Chairperson;

(b) three members to represent the interests of the State, of which at least one member is female;

(c) two members to represent the interests of registered trade unions, of which at least one member is female;

(d) two members to represent the interests of registered employers' organizations, of which at least one member is female;

(e) not more than four members, who in the opinion of the Minister, posses specialised knowledge in labour and employment, immigration and education matters;

[The word "possess" is misspelt in the Government Gazette, as reproduced above.]

(f) one member representing the interests of persons living with disabilities; and

(g) one member of the National Youth Council established by section 2 of the National Youth Council Act, 2009 (Act No. 3 of 2009).¹⁶

The Act permits the Board to seek approval of the Minister to co-opt individuals for the purposes of assisting the Board with the performance of its functions. The co-opted individuals are however precluded from voting at the Board meetings.¹⁷ This approach in line with good governance principles. Seeing that the Board is statutory appointed and derives its powers and

¹⁶ Section 3 (1) of the Act.

¹⁷ Section 3 (2) of the Act.

functions from the statute, it is only right that only those that are statutory appointed by given powers to vote.

The Minister is required by the Act to invite in writing nominations from registered trade unions, registered employers' organisations, organisations representing the interests of disabled persons and from the Board of the National Youth Council a representative to serve on the board.¹⁸

The Employment Services Board composition is broad. Having a very wide board can have both advantages and disadvantages. Sometimes it may prove difficult to finalise pressing matters as there might be a lot of disagreement within the board. However, having a board wide board ensures that you are able to appoint people with a wide range of expertise to add value to the activities of the board.

Furthermore, having a wide board allows various sectors and or stakeholders to be represented. Looking at the composition of the board reflected above, both the employee and employer parties as members to the employment relationship are represented. In addition the state as the key stakeholder and, labour and employment experts also form part of the board composition. It is essential to have state representation on the board. The state role through governmental power is to enact laws, craft policies and generally take care of the wellbeing of its citizens. The state is also the biggest employer in Namibia and therefore it is only logical the state's interests are represented on the board. Labour and employment expertise play a crucial role on the board as they provide insights on the functioning of the labour market and assisting the board and the responsible Minister to keep abreast with the changes in the labour and employment sector, both locally and internationally. Experts in labour and employment possess the necessary skills and capabilities to advise and guide on changes in the legislative landscape on labour issues. Labour Experts therefore add value to the boards function of advising the responsible Minister on any other issue that affects the labour market.

Namibia has been progressive in ensuring that persons living with disabilities have not ignored when it comes to employment and socio-economic development. In fact, the government has introduced a division known as "disability affairs" under the "Ministry of" Furthermore, the government established the National Disability Council. The representation of interests of disabilities on the Employment Services Board is thus indicative of the government's aim and efforts to integrate persons with disability affairs in the frameworks, policies and practices aimed at socio-economic development in Namibia.

¹⁸ Section 3 (g) of the Act.

Lastly, a member of the National Youth Council is to be representative of the Employment Services Board. This ensures that the interest of the youth is not only recognized but policies and frameworks are established that are geared towards promoting the needs and the desires of the youth.

Undoubtedly, the board composition is all inconclusive. All possible parties that may have interests in labour and employment service matters are represented on the board. Some could argue to say that there are other sectors of society whose representation as not been made provision for on the board. For example, some could suggest that various sectors of employers and employees could be represented separately instead of having broad representative of employer and employee representatives. Though this may have its advantages, it could unnecessarily increase the size of the board, making the board performance of the functions cumbersome and ineffective.

At the helm of the Employment Services Board as indicated above is chairperson appointed as such by the Minister. The position of board chair is distinct and comes with extra accountability and leadership tasks. Encouraging conversation among the board members and granting each member a voice is one of the chairperson's duties. In chairing a board meeting the chairperson is required to follow certain crucial steps. Firstly, the chairperson has to determine whether the members present meets a required quorum. The procedural step is to call the meeting order. Thereafter, the chair is required to call on the members to approve both the meeting agenda and previous minutes. Once the agenda and the previous minutes have been approved, the board members can get into the business for the day. This is where substantive discussion of agenda points take place, recommendations are made, and board resolutions are taken. At the end of the discussion, the chairperson brings the meeting to the end by making an announcement to this effect and announcing the date for the next meeting. These are important procedural steps that boards chairpersons are to be acquainted with for the smooth facilitation of board meetings. The chairperson provides strategic direction for the board. Having a visionary chairperson is crucial for the overall success of the board's functions.

(A) Functions of Board

The functions of the Board are set out in section 4 of the Act and includes amongst others the responsibility to investigate and advise the Minister on the provision of employment services and the attainment of other objectives of this Act; the duty to assist the Minister in monitoring and analysing labour market developments concerning occupations and occupational segments in particular, including vocational training; advisory role in that the Board must advise the

Minister on legislation pertaining to the provision of employment services and regulation of private employment agencies; the duty to facilitate and coordinate multi-sectoral cooperation to achieve the objectives of this Act; the duty to advise the Minister on the performance of the bureau in providing labour market services; and lastly, the responsibility to advise on any other employment matter that the Board considers useful to achieve the objects of this Act or is referred to the Board by the Minister.¹⁹

There are several objectives set out in the enabling Act. The Board primary responsibility to ensure the achievement of these objectives. The board must set in place several activities for all entities falling under the responsibility of the board and give clear directives on the particular activities to be carried out. The functionaries must then report to the board on how the activities have been carried out. The board thereafter takes informed decisions regarding the implementation further activities. The board has the overall responsibility to advise the Minister on the attainment of its objectives under the Act.

The board has the responsibility to monitor analyse the labour market developments and advise the Minister concerning occupations and occupational sections. Employers create demand for labour, while employees supply it; this is known as the labour market, sometimes referred to as the employment market. Major player in every economy, it is closely related to capital, product, and service markets.

Both macroeconomic and microeconomic perspectives on the labour market are important because they provide different perspectives on employment and the economy overall. Macroeconomic variables such as immigration, population aging, and educational attainment all have an impact on supply and demand, as do dynamics in both domestic and global markets. The gross domestic product (GDP), participation rates, productivity, unemployment, and total income are all significant metrics. At the microeconomic level, individual businesses hire and fire workers as well as change hours and pay. The quantity and quality of labour that employees receive, as well as their pay and benefits, are determined by the interplay between supply and demand.

Labour market developments concerns two major theories namely, the Keneyisian and Neoclassical theories. Neoclassical employment theories make use of A.C. Pigou's labour market perfect competition model, which is predicated on a number of premises. First off, the labour market is very open since both employers and employees have access to nearly all of the information on pay and employment opportunities that are available on the market. Second, in

¹⁹ Section 4 of the Act.

the context of the economy, employers and employees are both "rational" in that they aspire to maximize real pay satisfaction while employers pursue maximum profit. Thirdly, since each employer and worker makes up such a tiny percentage of the labour demand as a whole, their choices have no influence on pay. Fourthly, the movement of the work force and other production elements are unhindered. Fifth, while deciding on compensation or hiring practices, employers and employees operate independently of one another and without consulting one another or other employers. Sixth, labour is uniform and flexible in specific markets (movable in the economic sense).²⁰ The balance of the labour market does not preclude unemployment, according to the neoclassical idea. This phenomena is described as the outcome of restrictions on the pay mechanism's freedom of operation, which arises from the conflict between the demands of the free market and the activities of employees. As a result, unemployment is viewed here as a choice phenomena connected to the growing labour market imbalance.²¹

Keynes, who is the advocate of the Keynesian theory contend that wages were characterized by a form of inflexibility (particularly with regard to their downward movement) and that labour was highly rigid, might result in the occurrence of economic balance even in cases when employment was not full. Such a scenario would result from interference with pay adjustments as well as—and perhaps most importantly—a lack of demand worldwide.²² In general, it is necessary to say that J. M. Keynes disagreed with neoclassicists regarding the effectiveness of market mechanisms in the market economy. Additionally, he thought that when the market mechanism operated freely, there was a tendency for the labour force supply to exceed the labour demand, which resulted in unemployment. He believed that this tendency was caused by a lack of consumer demand.²³

The idea of neoclassical and Keynesian theories are to be considered and given much thought by the board when taking strategic decisions and advising the Minister on labour market development.

There are various key indicators of the labour market. These include unemployment rate, labour force, labour force participation rate, labour productivity, and employment-to-population ratio.

Labour market can be divided into various types such as the skilled market, unskilled market, semi-skilled market, internal market and external market.

²⁰ Magdalena Knapińska Labour market theories in contemporary economics Article in Transformations in Business and Economics January 2011.

²¹ Ibid.

²² Ibid.

²³ Ibid.

Skilled market: Compared to unskilled or even semi-skilled work, skilled labour has demands that are based on more education, experience, and knowledge. A specific sector or industry requires a certain amount of education to provide the groundwork for the significant responsibilities that employees will play in their day-to-day work. Before skilled labourers are prepared to start a new profession in the skilled labour force, they must complete specific training and education. Most skilled workers hold a bachelor's degree or a specialist degree.

Semi-skilled market: In addition to a high school degree and sometimes a few college courses, the majority of semi-skilled labourers have one or more earned training certificates in the sector in which they hope to specialize. Most semi-skilled occupations don't require a lot of training or a particular degree of schooling.

Unskilled market: By no means does the term "unskilled labour" imply that the worker is not required to have any abilities. It merely indicates that the person lacks any official, specialized training, or educational background in any given industry. The working force is heavily dependent on unskilled workers. Unskilled labourers, like those who work as janitors, fast food workers, maids, furniture movers, etc., can learn on the job, usually with some physicality involved. Unskilled workers should be able to follow instructions and have the ability to learn new things.

Highly skilled individuals frequently benefit from better pay, stable employment, and career growth prospects. Semi-skilled workers, on the other hand, have restricted professional progression opportunities, are less fortunate in terms of job perks, and are more vulnerable to economic downturns.

Internal market: An organization with an internal labour market is one in which managerial decisions directly affect an employee's job assignment, tenure, and hierarchical level.

External market: An organization that uses the external labour market fills senior positions mostly by promoting current personnel from lower-level positions. The two primary benefits of having an external labour market are that it gives senior executives more options due to free competition and that outsiders may add fresh perspectives to a business.

(B) Tenure of office and filling of vacancies

The provisions of the term of office and the filling of vacancies of Board members is outlined in section 5 of the Act Accordingly, a member of the Board is appointed for three years and may be reappointed at the end of the term of office.²⁴ There are several reasons under which the

²⁴ Section 5 (1) of the Act.

Minister may remove a member from office. This reasons include: resignation by member; failure to represent that interests; failure to attend three consecutive board meetings without permission or good cause; insolvency; conviction of a criminal offence and and sentenced to prison without an option of a fine.²⁵ The Minister must request the affected board member to make a representation regarding the allegation that makes him or her unfit to the part of the Board and if the Minister has reasonable cause to believe that the member is no longer fit or able to discharge the functions of that member's office or for good cause.²⁶

Whenever a vacancy occurs on the Board, the Minister must appoint a member to fill that vacancy for the unexpired term of office; and comply with section 3(3) when doing so.²⁷

Generally, a board is a governing body responsible for making high-level strategic decisions. All boards regardless of their size needs to be governed and operate in accordance with the corporate governance principles. The company's legislation and corporate governance codes of each jurisdiction as well common law principles governs the procedures and process relating to board appointments and the functions of such boards. In Namibia the Companies Act 28 of 2008 and the Namibian Code on Corporate Governance (commonly known as NAMCODE) are the key instruments that provide for board appointment and operations in the Namibian context. Board appointments are not permanent but rather rotational. Similarly, the board's tenure as set out above is three years. The is a standard period for most Board's in Namibia. Board tenure various but it is mostly between three to five years. Having a shorter duration for the board has both advantages and disadvantages. The first advantage is that it allows fresh ideas to come to the board with the appointment of the new board. This could be referred to as "renovating the board". Changes the members of the board every so often, is important as fresh 'eyes', 'ears' and 'ideas' is will help the board execute it's mandate effectively. However, keeping the boards tenure to a short period comes with difficulties. Some projects that need to be executed by the board may outlive the boards tenure. Therefore, when deciding on the board's tenure, it is crucial to pay attention to the functions that the board is required to perform. In terms of this Act, most of the functions which are discussed later, are to be completed annually with the submission of the report to the relevant Minister. In that case, the three-year tenure set by the Act is appropriate.

The Act also provides for the re-appointment of a board member. Re-appointing a board member may sometimes be viewed as a perfunctory activity, aimed at keeping the board

²⁵ Section 5 (2) of the Act.

²⁶ Section 5 (3) of the Act.

²⁷ Section 5 (4) of the Act.

member on the ‘payroll’ of the board. Thus, it could be undesirable for board member re-appointment. However, certain circumstances may necessitate the re-appointment of a board member. This could be the case where a particular board member has peculiar skills, knowledge and expertise that is required for the proper execution of the board’s functions. The drafters have thus done well in providing for the opportunity to have the board members re-appointment. The drafters could have done well in setting out the reasons for which the board members could be re-appointed. This could provide for transparency and avoid contest against board member appointments.

Another noticeable feature of the board tenure and appointments, is the Minister’s power to remove any board member from office. The relevant Minister has the prerogative and powers to remove any member of the board from office. The Act sets out reasons for which the Minister may remove a board member from the office. The reasons vary, but seems to be inclusive of all potential reasons for which the Minister may remove a board member from office. The first reason relates to resignation. This is not per se at the behest of the Minister. The Minister simply notes and accepts the board member’s resignation. The remaining reasons are at the behest of the employer and includes insolvency, criminal record, the failure to attend board meetings without a valid reason or excuse and lastly, acting contrary to board’s interests and mandate. These are appropriate reasons for removing a board member from office because they could be seen as placing the reputation of the concerned board member in question. Someone that has been convicted for a criminal offence can for example not be trusted with responsibility of taking decisions that could potentially affect the livelihood of others. Though the reasons adequate for removing a member from the board, it could have been appropriate to insert a provision to say that “for any other reason, which in the opinion of the Minister warrants removal of the board member”. It could be argued that this could give the Minister too much power and which power could possibly be abused. But conversely, included a broad reason for removal of a board member could protect the Minister, if it transpires that a board member has committed a particular conduct that warrants removal but it is not provided for adequately. Reading Sub-section (3) meticulously, however suggest that the Minister has the power to remove a member of the Board for reasons not provided for in sub-section 2 above, if in the opinion of the Minister the Board member cannot fulfil his or her duties adequately. Whichever angle one looks at the Minister as the appointing authority also has the power to remove a member of the board from office as long as the Minister has justifiable grounds for taking such action.

(C) Selection and functions of the Vice-chairperson of Board

The Board's members are required to choose a vice-chairperson from among themselves at the first meeting and on subsequent occasions. The vice-chairperson will serve for a term that the Board will decide upon while making the election.²⁸ The vice-chairperson must take over as chairperson in the event that the chairperson is unable to serve or is absent for any other reason.²⁹ The members present at a Board meeting shall choose one person from among themselves to preside over the meeting in the event that the vice-chairperson and the chairperson are both unable or unable to do so. This person shall serve in all chairperson capacities during the meeting and until the chairperson or vice-chairperson returns to duty.³⁰ In the event that the vice-chairperson's position falls empty, the Board members are required to choose a replacement vice-chairperson from among themselves for the remaining portion of the term of office that their predecessor was elected to. In the event that the vice-chairperson's position falls empty, the Board members are required to choose a replacement vice-chairperson from among themselves for the remaining portion of the term of office that their predecessor was elected to.³¹

It is common practice to have a vice-chairperson appointed to a board. The purpose of the vice-chairperson is to assume the duties of the chairperson in the latter's absence. In a rare situation where the chairperson of a board resigns, the vice-chairperson automatically assumes the powers of the chairperson, until a substantive chairperson is appointed. This approach ensures that the work of the board does not come to a standstill in the interim because of the vacant position left by the chairperson. The appointment of the vice-chairperson is a democratic process. In other words, all board members participate and cast their votes as to who should be appointed as the vice-chairperson. Democracy is what everyone wants and it is mostly easier to lesson to the person what you have voted into office instead someone who has been appointed. Hence is it applaudable for the board to have taken the route of allowing the vice-chairperson to be elected instead appointed, especially considering that the fact that chairperson was appointed.

(D) Meetings of the Board

The Board is required to meet at least once every three months and the Minister is required to determine the date when, place where and time when the first meeting of the Board must be held.³² Subsequent to the first board meeting, the Board must thereafter decide on the date, place

²⁸ Section 6 (1) of the Act.

²⁹ Section 6 (2) of the Act.

³⁰ Section 6 (3) of the Act.

³¹ Section 6 (4) of the Act.

³² Section 7 (1) (a) of the Act.

and time when any other subsequent meetings are to be held.³³ The secretary appointed under section 10 with the approval of the chairperson is responsible for calling the next meeting of the Board in the event that one cannot be held for whatever reason.³⁴

The chairperson of the Board has the power to any at any time convene a special meeting of the Board.³⁵ Furthermore, the chairperson is required to convene a special meeting of the Board if requested thereto by the Minister or at least three members of the Board.³⁶ The chairperson is responsible for ensuring that board members receive appropriate notice of all meetings.³⁷ A quorum of the Board is comprised of the majority of its members when they convene.³⁸ In the event of a tie vote on any item, the member chairing the meeting has the additional casting vote on top of their deliberative vote. The decision of the majority of the Board members present and eligible to vote at a meeting constitutes a decision of the Board.³⁹ Any decision made by the Board or action carried out by the Board under its authority is not invalid solely because there is a vacancy on the Board or because someone who is not eligible to serve on the Board sat on the Board at the time the decision was made or the action was approved by the necessary majority of the Board members who were present and eligible to serve.⁴⁰

Normally board meetings are called by the chairperson of such as board. However, in this case the Minister calls for the first board meeting and thus decides on the time, date, and place of the board meeting to be held. The rationale for this is normally for the Minister to set the tone and inform the board members of the tasks that lies before them. The chairperson must ensure that the notice of board meeting goes out to all board members in advance. Thus, sufficient notice must be given to the board members to make proper arrangements to attend the board meeting. This limits the frequency of board members tendering apologies for the inability to attend the board meetings.

The enabling legislation, the organization's charter or bylaws specify what constitutes a quorum. In terms of the Employment Services Board, the quorum is a majority of the members of the Board constitutes a quorum for a meeting of the Board. The Act does not define the concepts of “quorum” nor “majority”. The generally acceptable view is 50% plus 1 makes up the quorum. According to the Companies Act⁴¹ the board may not proceed with the business of the day

³³ Section 7 (1) (b) of the Act.

³⁴ Section 7 (2) of the Act.

³⁵ Section 7 (3) (a) of the Act.

³⁶ Section 7 (3) (b) of the Act.

³⁷ Section 7 (4) of the Act.

³⁸ Section 7 (5) of the Act.

³⁹ Section 7 (6) of the Act.

⁴⁰ Section 7 (7) of the Act.

⁴¹ Section 37 of the Companies Act 28 of 2004.

unless a quorum of members is present at the time when the meeting proceeds to business. Thus, if a quorum is not present, the chair must not continue with the meeting and postpone it to a different date, which date should not be earlier than seven days after such postponement and not later than 21 days after such postponement.⁴²

Boards operates as partners to a partnership business. In the same way a decision taken by a partner binds the entire partnership, a decision taken by the majority of the board members binds the entire board, as a decision taken by the entire board. Thus, the minority views though recorded as such does not inform the resolution of a board and cannot be implemented.

(E) Committees of Board

The Board must ensure that the written records of the board meetings are kept. Furthermore, it is important to ensure that the board makes rules in relation to the holding of, and the procedures at its meetings.⁴³ The Board may form one or more committees to: (a) advise the Board; (b) exercise any authority or carry out any task that the Board may assign or delegate to the committee; and (c) look into and report to the Board on any matter the Board may refer to the committee for that purpose.⁴⁴

A committee is comprised of a minimum of one Board member and additional individuals as decided by the Board.⁴⁵ A member of the Board must be chosen to serve as the committee's chair. Any committee meeting may be attended by the board chairperson.⁴⁶ A committee may be dissolved or reconstituted at any time by the Board.⁴⁷ A function or authority that the Board has given to a committee is not taken away from it or transferred to another body.⁴⁸

Comment: Board committees exist to carry out particular functions and comprises of members serving on the substantive board. Dividing the substantive board into committees is in line with good corporate governance principles.

A committee is a group of one or more individuals in an organization made to serve a certain role. Board committees are standing committees that are subsidiaries of the board of directors. These are primarily composed of members of the board. Board committees are made to serve a specific purpose compared to the board in total. A board on particular areas of business.

Typically, candidates for boards are chosen based on the particular expertise they can offer the

⁴² Section 38 of the Companies Act 28 of 2004.

⁴³ Section 8 of the Act.

⁴⁴ Section 8 (1) of the Act.

⁴⁵ Section 8 (2) of the Act.

⁴⁶ Section 8(3) of the Act.

⁴⁷ Section 8 (5) of the Act.

⁴⁸ Section 8 (6) of the Act.

group. By designating board members with certain areas of expertise to committees, the board can efficiently access the most crucial information regarding particular topics.

Committees allow directors to deepen their knowledge of the organisation, become more actively engaged and fully utilise their experience. Being a committee member necessitates active involvement. Board members are more likely to participate actively in board discussions and engage in board activities when they feel challenged. Participation in committee work also lessens the chance that more outspoken board members will override quieter ones.

Board may through their committees make use of specific talents, skills and knowledge of individual board members to educate the rest of the board on major concerns and ideas.

Committees allow boards to divide the work into manageable sections. Committees handle a lot of the heavy work, so it makes sense for them to meet frequently enough to achieve the objectives that align with their mission. A large portion of a nonprofit board meetings for example, are devoted to formalities. Instead of scheduling full board meetings every few months, many nonprofit boards choose to arrange committee meetings on a regular basis and board meetings every two or three months.

Board committees are becoming increasingly important due to the legal, regulatory, strategic and institutional functions that boards are required to perform. It is thus imperative that board establish their committees carefully. This is vital for two reasons. Firstly, there is a need to comply with legal and regulatory framework of governance and industry specific framework. Secondly, carefully established committees ensure that the overall objective of the board is effectively achieved.

Ethics committee-An ethics committee offers guidance on potential ethical problems and acts as a resource for the organization's leadership. This entails determining the areas where there is an ethical risk, creating plans to mitigate that risk, and offering suggestions on how to best encourage ethical behavior inside the company. The committee keeps an eye on the organization's performance and offers suggestions for enhancements when necessary. The committee's ultimate objective is to guarantee that the company is operating morally, responsibly, and in accordance with all relevant laws and regulations.

Risk and Compliance committee- The Risk Committee is a sub-committee of the Board of Directors tasked with the sole and exclusive duty of supervising the global operations of the Corporation's risk management policies and practices as well as the functioning of the Corporation's global risk management framework. The risk and compliance committee that requires members with expertise in law, regulatory affairs and governance to guide the board

with ensuring organizational compliance. Knowledge about the law (i.e. international, regional and domestic) and the policy and institutional framework is vital. For instance, in terms of the Employment Services Board, it is crucial that committees members have specialized skills and expertise in employment law and policy as well as corporate governance, both at domestic, regional and international fronts.

Audit Committee-It is imperative that boards create an audit committee. Examining the correctness of the organization's financial records is the audit committee's responsibility. The function of audit committees is crucial in guaranteeing that organizations adhere to regulations concerning governance and industry-specific rules. It is their duty to provide an audit report for approval to the board once a year.

(F) Conduct of members and disclosure of interest

Disclosing conflict of interests is an essential feature of board meeting, whether in terms of the full board meeting or a sub-committee meeting. Good corporate governance requires that board members disclose their conflict of interests whether real or perceived, especially whether the board member's decision could potentially be impacted by the personal interests that the board member has on the matter.

In terms of the Act, a member of the Board, and a member of any committee who is not a member of the Board, may not -

- (a) engage in an activity that may undermine the integrity of the Board or a committee;*
- (b) participate in any investigation or decision concerning a matter in respect of which the member has a financial or other personal interest; or*
- (c) use any confidential information obtained in the performance of his or her functions as a member to obtain, directly or indirectly, a financial or other advantage for himself or herself or any other person.*

Members of the Board and non-Board committee members are required to report in writing to the Minister any direct or indirect financial interest they may have in any business conducted in Namibia or abroad, as well as any corporate entity engaged in such business.⁴⁹

When a member of the Board or a committee comes into direct or indirect financial or personal interest in a matter that is being discussed and decided by the Board or the committee, they are required to: (a) promptly and fully disclose the interest to the Board or the committee, as the case may be; and (b) withdraw from any further discussion or decision-making regarding that

⁴⁹ Section 9 (2) of the Act.

matter by the Board or committee, as the case may be.⁵⁰

A conflict of interest refers to a situation where an individual has competing responsibilities or interests. In a business setting, a conflict of interest arises when a individual's personal interests conflict with their professional obligations. It is imperative for one to declare conflicts of interest as it often have legal consequences. For example, a board member may be required to make a decision regarding a particular issue that is before the board and at the same time it may happen that the board member is related to a person involved in the matter which is before the board and on which the board has to pronounce itself. In order to ensure that the board takes an independent and unbiased decision, it is important that the board member declares a conflict of interests and excuse himself or herself for the period during which the matter concerned is being discussed and a decision taken. Conflict of interests can be perceived or actual. A real conflict of interest occurs when an individual has two competing interests, one of which interferes or undermines the ability to effectively carry out the required tasks at hand. When there is a high probability that an individual will have two conflicting interests in the future, one of which could impede his or her ability to carry out his or her board duties, this is known as a potential conflict of interest. Regardless of whether the conflict of interest is perceived or real, the concerned board member must simply excuse himself or herself to avoid the board in taking decisions that could possibly be successfully challenged in the future.

(G) Administrative work of Board

The Permanent Secretary is responsible for two things: (a) making Ministry employees accessible to assist the Board with secretarial and administrative tasks as it carries out its duties; and (b) appointing a Ministry employee to act as the Board's secretary.⁵¹ The Board may designate additional individuals to support it in carrying out its duties following consultation with the Permanent Secretary and with the Permanent Secretary's consent regarding the terms of appointment.⁵²

The Employment Services Board is established in terms of the existing government structure, that is to say that, although the board members themselves are not necessarily employees of the government, the board is established in terms of the existing structures of the government. In other words, the board is established in terms of the Ministry of Labour, Industrialisation and Employment Creation. It is thus incumbent on the relevant Ministry through the office of the Executive Director (previously referred to as the Permanent Secretary) to avail support staff to the

⁵⁰ Section 9 (3) of the Act.

⁵¹ Section 10 (1) of the Act.

⁵² Section 10 (2) of the Act.

board. The function of the support staff is to provide administrative support and clerical assistance to the board. Although these staff members who are to be appointed to the board for administrative support are already in the employment of the relevant government Ministry, it is imperative that the separate terms of reference and job description be established for the support staff. The board together the office of the Executive Director must come up with the terms of reference and the Job description of the support staff members. It must be noted that the special arrangement made in terms of administrative support to the board does not negate the existing employment relations between the concerned staff members and the government as the employer.

(H) Remuneration of Board members and expenses of Board

A member of the Board or any committee who is not employed full-time by the State is entitled to receive other benefits and compensation as determined by the Minister with the approval of the Minister in charge of finances.⁵³ The compensation or benefits specified in subclause (1) may vary depending on the position a member holds or the duties they complete.⁵⁴ The Ministry may use funds appropriated by Parliament for that purpose to pay for the salaries or allowances payable under subsection (1) as well as any other costs incurred by the Board in carrying out its responsibilities.⁵⁵

Board members posse's expertise and skills in various areas. Board members hence uses their skills and expertise to drive the strategic direction of the employment services. The board members thus perform work and requires to be paid. It is commendable that the Act specify that payment is to be made to the board members. Payment is a crucial issue and thus cannot be left to regulations. The legislators have done well to legislate on issues relating to the board payment.

(I) Reporting by Board

An important feature of the Act is reference to the provisions the board report. The board is required to submit a report to the relevant Minister. The Act in particular provides:

*The Board must before 30 June in each year compile and submit a report to the Minister on its activities for the past year.*⁵⁶

The Minister must lay the report referred to in subsection (1) before the National Assembly

⁵³ Section 11 (1) of the Act.

⁵⁴ Section 11 (2) of the Act.

⁵⁵ Section 11 (3) of the Act.

⁵⁶ Section 12 (1) of the Act.

*within 30 days after receiving it, 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 session.*⁵⁷

*The Minister may, in addition to the report referred to in subsection (1), submit to the National Assembly a report on any matter which the Board wishes to bring to the attention of the National Assembly.*⁵⁸

*The Permanent Secretary may, on such terms or conditions that he or she may impose, make available for sale to the public, copies of a report referred to in subsection (1).*⁵⁹

Reporting is a crucial duty of all boards. In fact, reporting is a corporate governance duty, and it calls upon boards to report on how policies have been implemented and decisions taken in relation to the boards functions and powers, and its effect on the relevant stakeholders. These reports typically include information about corporate governance procedures, regulatory compliance, company and board performance, board composition and how effective the company is at following good governance practices. Corporate governance reports aim to provide shareholders visibility into how the corporation does business, specifically the corporation's model, structure, activities and performance.

(J) Employment Services Bureau

Another equally important feature apart from the employment services board is the employment services bureau (hereinafter the bureau). Section 13 of the Act outlines the composition of the bureau. The bureau consists of the Director who is the head of the bureau, and all the employment officers of the Ministry.⁶⁰

The primary functions of the bureau are amongst others to register job-seekers; register vacancies in the public and private sector; assist job-seekers to find suitable employment and to recommend suitably-qualified job seekers to prospective employers; to provide vocational guidance, career and labour market information to job-seekers and other interested persons; to regulate and control the use of psychometric tests for selection and recruitment purposes in accordance with the Social Work and Psychology Act, 2004 (Act No. 6 of 2004); to liaise with the Ministry responsible for education in respect of educational and vocational training institutions on vocational attachments and internship; develop career guidance and related programmes aimed at helping persons to gain market orientated competencies; maintain the integrated employment information system in term of section 14; assist and facilitate research

⁵⁷ Section 12 (2) of the Act.

⁵⁸ Section 12 (3) of the Act.

⁵⁹ Section 12 (4) of the Act.

⁶⁰ Section 13 (1) of the Act.

for the Board on employment-related matters; to keep a list of non-Namibian citizens granted work permits in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993) and keep a register of private employment agencies.⁶¹

Importantly, the bureau is mandated by law to establish and operate an integrated employment information system to collect, store and update certain essential information that could aid with employment opportunities for the unemployed persons, should vacancies and placements become available. The information relates to the names, qualifications and occupations of job-seekers; vacancies in the labour market; training opportunities for retrenched workers and jobseekers; specialized skills and qualifications possessed by Namibian citizens and permanent residents; specialized skills and qualifications skills possessed by non-citizens residing in Namibia; and employers in Namibia.⁶² Having updated information on job seekers is important because it will assist the government to place unemployed and qualified persons in jobs that matches their skills. The significance of youth employment with corresponding skills lies in the fact that it is a crucial factor in determining future career paths.⁶³ The graph below provides an indication of Namibia's unemployment rate from 2015 to 2022. There are various factors that contributes to unemployment, such as the recent global pandemic of COVID-19, which led to job losses in certain sectors. Hence, the graph indicates that unemployment was a bit higher in 2020 and 2021, which are the periods in which the pandemic was pertinent. In 2022, after the pandemic, unemployment rate started to decline. This could be attributed to the fact that labour market stabilize after the pandemic, with the markets opening up.

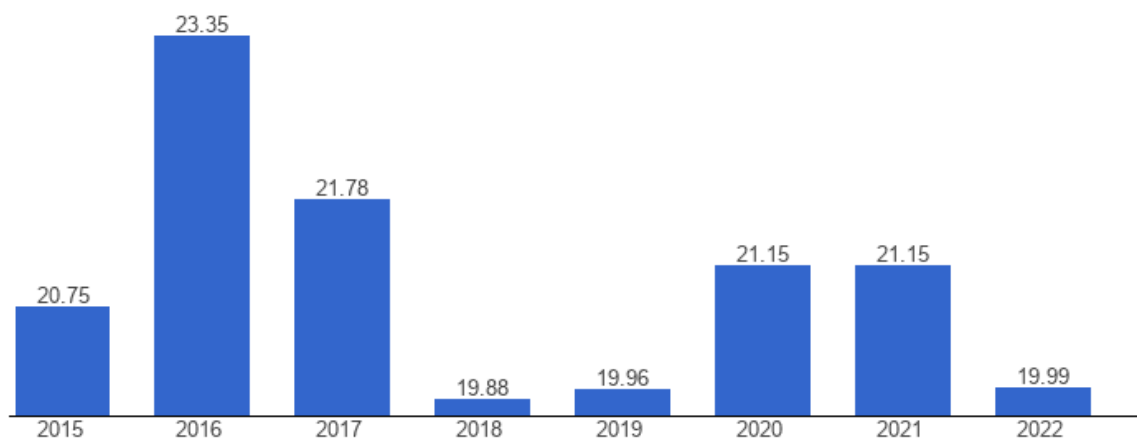


Figure 1. Namibia: Unemployment rate⁶⁴

⁶¹ Section 13 (2) of the Act.

⁶² Section 14 (1) of the Act.

⁶³ Habiyaemye A, Habanabakize, T and Nwosu C “Bridging the labour market skills gap to tackle youth unemployment in South Africa” *The Economic and Labour Relations Review* 2022, Vol. 33(4) 788.

⁶⁴ Available at https://www.theglobaleconomy.com/Namibia/unemployment_rate/ accessed on 03 May 2024.

Dealing with unemployment can be a daunting task for any government. Unemployment also cripples the also struggling economies of developing countries. Thus, it is crucial for bureau to keep crucial information at national level to assist the government with tackling the issue of unemployment and achieve the aspirations of employment creation. It is one thing to keep data and completely a different ball game altogether to use the data for developmental purposes. It is thus recommended that the information that is obtained and kept be utilized for proper purposes of job creation and broader development of the employment sector.

IV. CONCLUSION

Employment is a critical aspect of socio-economic development. Once someone is employed, he or she is able to make a living and does not depend on the social grants offered by the government to take of the unemployed. This relieves the pressure of the government. Furthermore, when a person is employed he or she can take care of himself or herself and his or her depends. In this way employment creation positively impacts the entire spectrum of things. Namibia has done well by enacting the Employment Services Act 8 of 2011. Furthermore, the establishment of the employment service and employment bureau. The effective discharge of functions by this crucial bodies will lead Namibia into prosperity.

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