REPUBLIC OF NAMIBIA

MINISTRY OF PUBLIC ENTERPRISES

Hybrid Governance Model for Namibian Public Enterprises

Executive Summary

On 21 March 2015 His Excellency The President Dr. Hage Geingob, according to the provisions of Chapter 5, Article 32 (3) (g) of the Namibian Constitution, established the Ministry of Public Enterprises ("MPE") to reform the Namibian Public Enterprises ("PEs") by adopting a Centralized Governance Model to replace the existing Dual-Governance Model. The Ministry was tasked to propose the most appropriate Governance model which is contained in this document.

Set out in Section 2 and 3 below, I provide the history and evolution of the Public Enterprise landscape. Namibia has moved from a completely decentralized model (Line Ministry - PE), to a dual governance model (Line Ministry – MPE – PE) and the proposal now is to move to a hybrid centralized model. It is a hybrid model, as it is proposed that only some Public Enterprises be fully centralized directly under MPE at this stage, with only some governance related oversight by MPE for the remaining PEs.

Section 4 highlights the challenges of the current dual model, and why it is time to review that model. At present there is poor synergy between the PE's, their shareholder representative and the priorities of the State. Challenges range from the complexity of the dual model with various associated implications, to the duplication of costs to capacitate each Ministry to effectively execute their shareholder roles.

Therefore a new hybrid centralized model is proposed in section 5. PEs are classified as Commercial, Non-Commercial and Financial, with Commercial PEs proposed for full centralization. The document sets out the groupings of PE's and the operations and expected benefits of the proposed new model.

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1. Introduction

On 21 March 2015 His Excellency The President Dr. Hage Geingob, according to the provisions of Chapter 5, Article 32 (3) (g) of the Namibian Constitution, established the Ministry of Public Enterprises ("MPE") to reform the Namibian Public Enterprises ("PEs") by adopting a Centralized Governance Model to replace the existing Dual-Governance Model. The Ministry was tasked to propose the most appropriate Governance model which is contained in this document.

The evolution of the Governance/Ownership models of the Namibian Public Enterprises (PEs) has followed a typical pattern similar to that historically found in developed countries. The creation of the Ministry of Public Enterprises by His Excellency will allow us to conclude the final chapter of this evolutionary process to optimize the efficiency and effectiveness of our current and future portfolio of Public Enterprises. The purpose of this document is to expose and highlight the failure of the current model and to make a formal recommendation on the most favorable Governance/Ownership model to thereby qualify the commitment and investment into the creation of the new Ministry of Public Enterprises.

2. Background

The first stage of Public Enterprises (PEs) in Namibia was a situation where Public Enterprises were completely **decentralized**. In a decentralized model the individual Portfolio Ministries are responsible for all functions related to the Public Enterprises under their jurisdiction and this was the initial scenario.

In the year 2000, Cabinet appointed a (Cabinet) Committee to conduct a survey on the remuneration of Boards of Directors, Chief Executive Officers and Senior Managers. This led to an in-depth study by a consulting firm on the governance of Public Enterprises in Namibia. Consequently, a report on the "Governance Policy Framework for State-Owned Enterprises" (SOEs) was produced in 2001. Between 2003 and 2006 the Central Governance Agency existed under the Office of The Prime Minister. The foregoing activities culminated in the promulgation, in 2006, of the **State-Owned Enterprises Governance Act, 2006** (Act No. 6 of 2006), which was subsequently amended in 2008.

The promulgation of this Act led to the familiar **Dual-Governance** model which has existed ever since. Under the Dual-Governance model the responsibilities for monitoring and governing of PEs were shared between the Portfolio (Shareholder) Ministries and the State Owned Enterprises Governance Council (SOEGC).

Ten years after this model was implemented, it has become apparent that this model does not provide the optimal governance model. It is also important to note that there is no evidence to demonstrate that a Dual-Governance model has ever worked in any other country. On **30 May 2014** the SOEGC under the Chairmanship of the Right Honorable Prime Minister prepared a **Draft Cabinet Memorandum** under the subject ***"PROPOSED ESTABLISHMENT OF A CENTRALIZED OWNERSHIP MODEL FOR STATE OWNED ENTERPRISES (SOEs) SECTOR IN NAMIBIA".***

The Memorandum was not submitted to Cabinet but was overtaken by events when a consultancy was initiated to deliver a ***"Proposal to transform the SOEGC into the Ministry of Public Enterprises"*** which has subsequently led to the establishment of the new Ministry of Public Enterprises, temporarily still within the Dual-Governance Model.

Fig 1. Global Evolution of Public Enterprise Governance:

3. Challenges of the current Dual-Governance Model

The overall state of the Namibian PE Corporate Governance system is ineffective. The 72 Namibian PEs as listed in the current Schedule 1 of the SOEG Act (2013 amendment)[1] are to a great extent uncontrolled and unmonitored with regard to their corporate Governance and activities. The Namibian Government spends nearly half the size of its annual development budget on the funding of PEs, without any substantive and material control over the performance of this investment.

The Namibian PEs decentralized Dual-Governance model poses the following challenges:

a. **Execution of Ownership Powers –**
The Dual-Governance model relies almost exclusively on the Portfolio Ministries to ensure compliance. The majority of the Portfolio Ministries are however, not executing their assigned ownership powers. For example, less than 25% of the Portfolio Ministries have signed Performance Agreements with the PEs under their Vote as required by Law.

b. **Monitoring and access to key financial information –**
Most of the PEs do not submit to their Portfolio Ministries financial and business plans, including investment plans, on a regular basis. Without access to financial information, the Portfolio Ministries are deprived of an important tool to measure the performance of PEs. At the same time, however, Portfolio Ministries are required to budget for their PEs. This leaves the critical question: "How can the Portfolio Ministries budget for their PEs without accurately knowing what the financial status of the entity is?". This anomaly has led to the common current scenario whereby the Shareholder is caught by surprise when PEs are in financial trouble, complicating and compromising the Ministry of Finance budgeting process.

c. **Lack of oversight abilities –**
Portfolio Ministries are not effectively executing the State's shareholder/ownership rights and responsibilities, and are typically not equipped for this role. They would require specialist skills which

are expensive and not easily attracted. In most Portfolio Ministries the oversight function is scattered across various division and departments which seriously compromises the quality and effectiveness of performance monitoring. Furthermore, as each and every Portfolio Ministry is performing this task differently, there is no consistency in the oversight function across the portfolio. To centralize this function would be more cost effective and create the much needed consistency. MPE would be the natural home for such a pool of financial, legal, governance and human capital experts.

d. **Ineffective Communication and Information Sharing –**
Having 72[2] PEs reporting to different Portfolio Ministries and them in turn reporting to the MPE or to the Cabinet Committee on State Ownership makes information sharing much more costly, ineffective, time-consuming and is also likely to impede the quality of information given. Finally, there are likely conflicts of interest in Portfolio and PE functions.

e. **Mandate is not geared towards execution –**
A further failure of the Dual-Governance model is that it disempowers and inhibits the mandate of the MPE (previously the SOEGC and its Secretariat). The function of the Council was to streamline the oversight of the PEs by introducing uniform rules and directives for SOE governance. However, currently the MPE has no mandate to control or influence the Portfolio Ministries in the execution of their ownership function. As a result, Portfolio Ministries are operating in a vacuum without clear guidance.

f. **Complex reporting and governance structure –**
The current decentralized model manifests a multiplicity of owners and supervisors, which creates too many layers of governance and accountability. The Namibian PE governance structure currently comprises of the Cabinet, Cabinet Committees, the MPE, numerous Portfolio Ministers, Boards of Directors and Executive Management of PEs. No clear lines of reporting and accountability and a high number of actors leads to delays in important decision making, or no decision making at all. The lengthy and ineffective reporting structure severely impedes and

compromises the efficiency and effectiveness of PEs in Namibia. PEs perceive themselves as the "servant of the two masters", regularly receiving non-aligned directives, which adversely affects performance and morale of the cadre at the PE, Portfolio Ministry, and at the MPE. Finally, different establishing Acts or constituent (policy) documents of PEs prescribe different governance structures, which overlap and even contradict the provisions of the SOEGA, 2006 Public Enterprises Governance Act, Act No. 8 of 2005 (PEGA 2015). Likewise, the various categories of PEs make the task even more cumbersome when it comes to the effective supervision and performance management of PEs.

In conclusion, the lack of a centralized governance model has resulted in poor synergy between PEs and marginal alignment to Government's developmental goals (NDPs, Vision 2030). PEs are critical implementers of Government projects and it is therefore imperative that their strategies are aligned to that of the State.

4. Recommended Model: Hybrid Governance Model

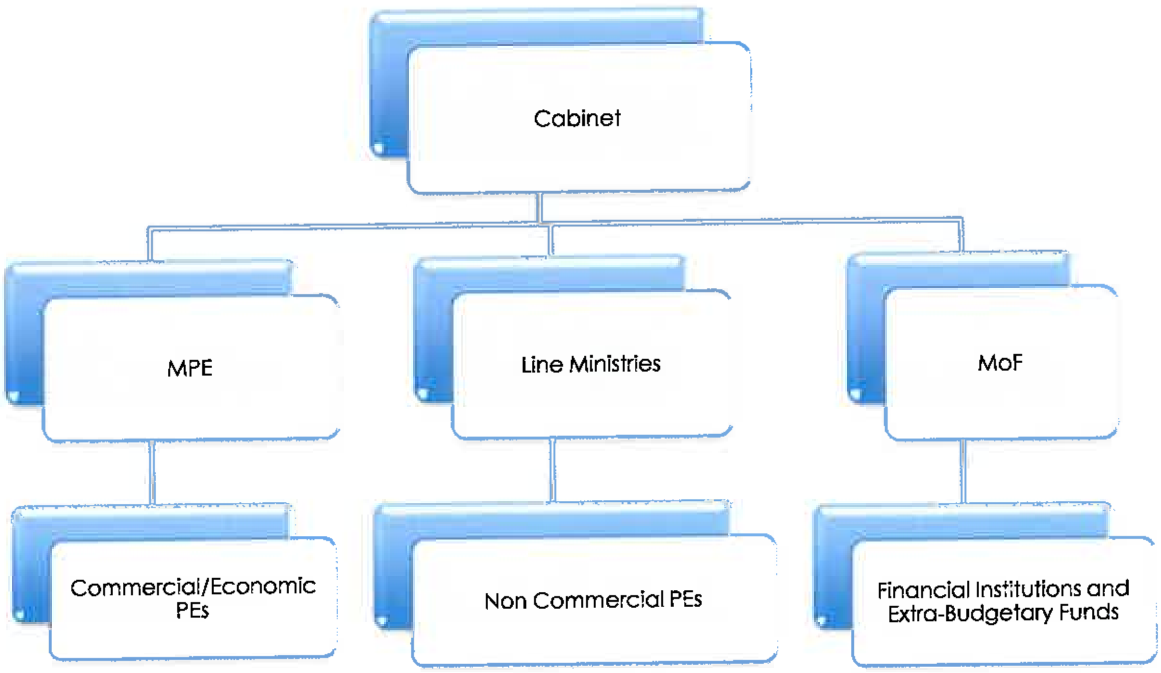
There is overwhelming evidence from global case studies (See Annex 1) and the analysis of our current ineffective Dual-Governance Model that a Centralised Governance/Ownership model is the **only option** to pursue.

Since Independence, the pool of PEs has grown exponentially and all types of entities were included: from Trusts, to commercial companies, to regulatory bodies, educational facilities, financial institutions and banks, etc. As such, there is no one-size-fits-all approach and some reorganisation is required to arrive at an effective governance model.

4.1 Hybrid Governance Model

In a first step, I am therefore recommending a Hybrid Model distinguishing between three primary Categories namely **Commercial Public Enterprises, Non-Commercial Public Enterprises** and **Financial Institutions / Extra-Budgetary Funds.**

Fig 2. Proposed Namibian Hybrid Model:



4.2 Grouping of PE's according to Hybrid Governance Model

For the purpose of the Hybrid Model, a **Commercial Public Enterprises** is defined as:
(a) "an entity wholly or partially owned and/or controlled by the State which, guided by market principles, is to provide a product or render a service in the best interest of the public while promoting economic growth and fulfilling its mandate; and
(b) designated as such by the Minister (of Public Enterprises) by notice in the Gazette from time to time."

A Non-Commercial Public Enterprise would be all the other entities included in Schedule 1, which are not of a financial nature. These would resort under the respective line Ministries.

All entities of a financial nature, as well as extra-budgetary funds, will resort under Ministry of Finance.

For clarity purposes, attached in **Annex 2** is a listing of all PEs currently in Schedule 1 of the PEGA, and the intended grouping in Commercial, Non-Commercial and Financial Public Enterprises.

Further clarity is provided by creating functional sub-grouping, distinguishing between and allocating these to their respective ministerial homes (see **Annex 3 and Annex 4**):

Table 1: Grouping of PEs for the Hybrid Governance Model

Type of Entity	**Ministerial Home**
Commercial PEs	**Ministry of Public Enterprises**
Non-Commercial PEs • Regulators • Promotion, Development, Advocacy & Research bodies • Educational and Training Institutions	**Respective Portfolio Ministry** (as per Annex 3)

• Media Institutions • Service providers (Cultural, Social and General)	
Financial Institutions and Extra-Budgetary Funds	**Ministry of Finance** (as per Annex 4)

4.3 Operation of the Hybrid Governance Model

In the Hybrid Governance Model, the administration and supervision of the various groups of **Non-Commercial Public Enterprises** will be the responsibility of the respective Portfolio Ministries (as per **Annex 3**).

While ultimately accountable to the Portfolio Ministry, this category of PEs will still adhere to the MPE issued generally accepted common principles of good Corporate Governance and reporting. This will eventually result in increased effectiveness and efficiency with substantial anticipated cost-savings. The MPE will include these Non-Commercial Public Enterprise in its oversight management system that will be made accessible to the Portfolio Ministry.

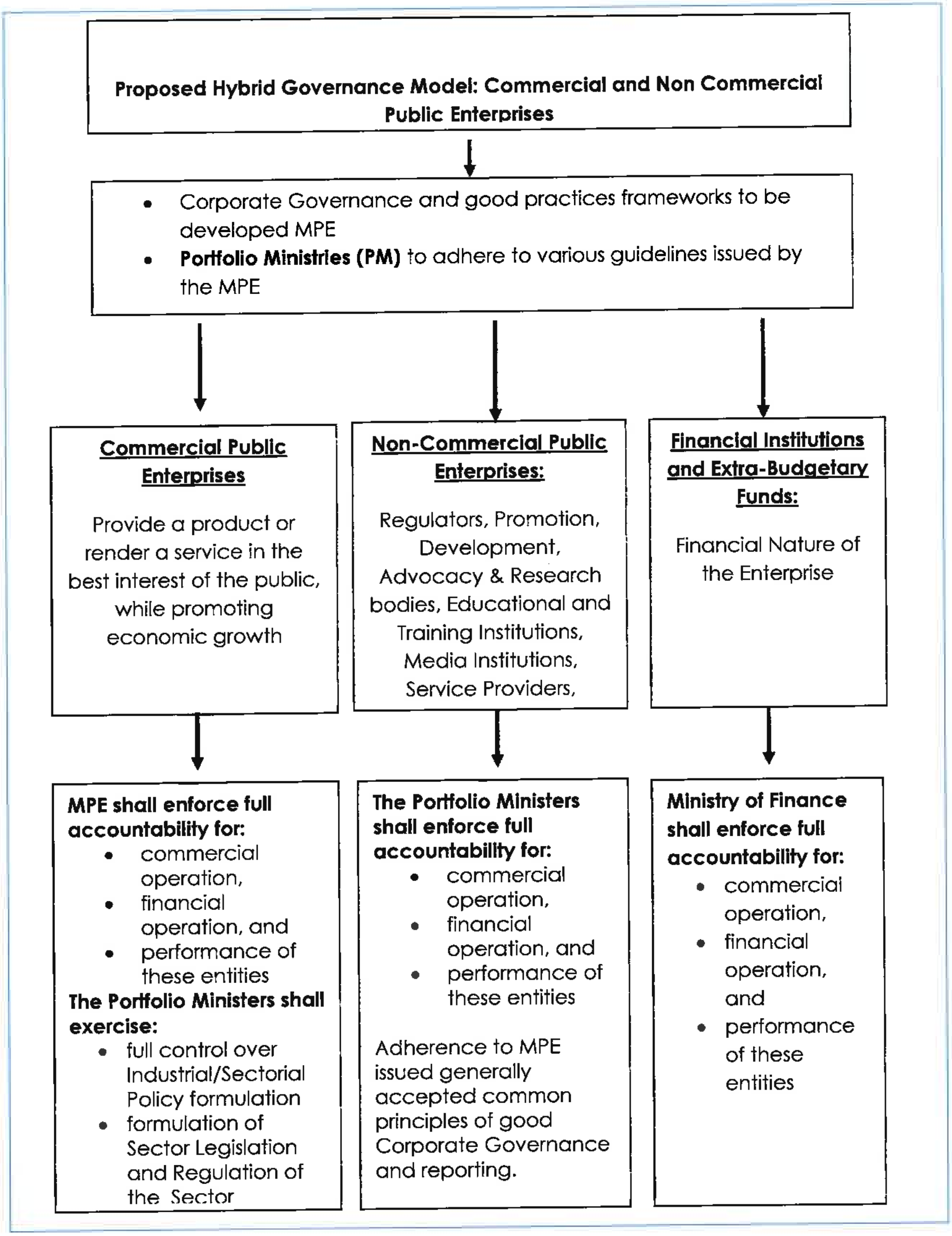
All **financial institutions and extra-budgetary funds** will become fully accountable to the Ministry of Finance.

As to the **Commercial Public Enterprises**, the MPE will execute full shareholder rights. This group of PEs will be wholly accountable to the MPE in terms of commercial and financial operation, and performance. Key oversight functions as per the PEGA include the appointment of Boards, enforcement of good Corporate Governance through Governance and Performance Agreements, critical review of Business and Financial Plans, approval of Annual Budgets, issuance of remuneration directives for Boards and Management, commission of Special Investigations as and when necessary, guidance and approvals during restructuring of PEs.

Portfolio Ministries retain full control of Industrial/Sectoral Policy formulation, Formulation of Sector Legislation and Regulation of the Sector.

The Hybrid Governance Model will address the current challenges in the Dual-Governance Model, creating important oversight efficiencies which are expected to have a positive impact on the performance of the PE sector in Namibia.

Figure 2: Hybrid Governance Model



4.4 Benefits of the Hybrid Governance Model

The challenges identified with the dual governance model above would be addressed through the operation of the hybrid model, as summarised in the table below:

Table 2: Benefits of the Hybrid Model

Challenges of the Dual Model	**Benefits of the Hybrid Model**
Lack of Execution of Ownership Powers	Ensures that ownership powers are defined and utilised to ensure performance aligned to mandate
Ineffective monitoring and access to key financial information	Centralised and standardised access and monitoring of financial information
Lack of oversight abilities	Centralised expertise provides cost effective and consistent oversight
Ineffective Communication and Information Sharing	More effective and efficient communication and removal of conflict of interest
Mandate is not geared towards operational execution	Clear mandate empowering all parties towards operational execution
Complex reporting and governance structure	Reducing reporting layers and establishing accountability

5. Conclusion

A famous Einstein quote reads as follows:

"Insanity: Doing the same thing over and over again and expecting different results."

The creation of the new Ministry of Public Enterprises to implement a centralised ownership model for Public Enterprises is a visionary move. The Ministry of Public Enterprises has spent countless hours over the past 16 months analyzing and diagnosing the core reasons behind the obvious failure of most of our Public Enterprises (the Commercial Public Enterprises in particular) and the overwhelming reasons can be attributed to the highly flawed Dual-Governance model.

I want to stress that this is not a Namibian failure as such, but rather a common Global scenario which is why countries, which have not already migrated towards a more centralized governance/ownership model, are in the process of doing so.

We will not achieve the desired effects if the MPE remains a mere compliance and oversight body (which is what the SOEGC has done for 10 years). The MPE will however become highly effective if the proposed model is adopted. Without these functions, the Ministry will have marginal authority to exercise over PEs and the status quo is likely to remain for the reasons mentioned under section 3. The Dual-Governance Model does not provide the institutional and organizational infrastructure for an effective shareholder role. I am convinced that the proposed Hybrid Governance model will provide the MPE with the optimum institutional and organizational infrastructure to reform our Public Enterprises without escalating cost. The model will allow for the MPE to become more focussed and specialized with an appropriate structure and skills to be a professional shareholder representative for State.

This model is the obvious next step in the evolution of the Namibian Public Enterprises landscape and it leaves room for further evolution/refinement if the need arises. This model represents a revolutionary yet subtle reform and the implementation thereof will guide us towards further future reform.

Annex 1 – International Views on a Centralised Model

Organization for Economic Cooperation and Development

The Organization for Economic Cooperation and Development (OECD) clearly argues in favor of adopting a centralized model:

> "This approach would help in clarifying the ownership policy and its orientation, and would also ensure its more consistent implementation. Centralization of the ownership function could also allow for reinforcing and bringing together relevant competencies by organizing "pools" of experts on key matters, such as financial reporting and board nomination. In this way, centralization can be a major force in the development of aggregate reporting on state ownership. Finally, centralization is also an effective way to clearly separate the exercise of ownership function from other activities performed by the state, particularly market regulation and industrial policy...

(Source: OECD)"

The World Bank

The World Bank has clearly mapped the evolution of governance/ownership models in countries and also argues strongly in favor of a centralized model:

> "The decentralized and dual models are the more traditional ones for organizing the state's ownership arrangements. Countries are moving away from these models, however, toward centralized models to bring focus and professionalism to the state's ownership role."

> "In recent years, the models discussed above have been supplanted by more centralized approaches that concentrate SOE ownership authority in a single specialized entity. Under a centralized ownership model, the specialized entity serves as the shareholder representative with oversight responsibility for SOEs. It owns the SOE shares or is responsible for exercising all ownership functions on behalf of the state as owner, while the line ministry is responsible or policy making and the regulatory environment in which SOEs operate."

Source: World Bank. 2014. Corporate Governance of State-Owned Enterprises

Annex 2 – Proposed Grouping of Current Schedule 1 (PEGA) Entities

I. Commercial Public Enterprises (will resort under the Ministry of Public Enterprises):

1. Air Namibia
2. Epangelo Mining Company
3. Henties Bay Waterfront
4. Luderitz Waterfront Company
5. Meat Corporation of Namibia
6. Namibia Airports Company
7. Namibia Institute of Pathology
8. Namibia Ports Authority
9. Namibia Post and Telecommunications Holdings
10. Namibia Power Corporation
11. Namibia Wildlife Resorts
12. National Fishing Corporation of Namibia
13. National Petroleum Corporation of Namibia
14. NIDA (ODC + NDC merger)
15. Roads Authority
16. Roads Contractor Company
17. TransNamib Holdings
18. Zambezi Waterfront

II. Non-Commercial Public Enterprises (will resort under their respective Portfolio Ministries):

1. Accreditation Board of Namibia
2. Communications Regulatory Authority of Namibia
3. Diamond Board of Namibia
4. Electricity Control Board
5. Fisheries Observer Agency
6. Karakul Board
7. Meat Board
8. Namibia Agronomic Board
9. Namibia Board of Trade
10. Namibian Broadcasting Corporation
11. Namibia College of Open Learning
12. National Commission on Research, Science & Technology

13. Namibia Competition Commission
14. Namibia Estate Agents Board
15. Namibia Financial Institutions Supervisory Authority
16. Namibia Fish Consumption Promotion Trust
17. Namibia Institute for Mining Technology
18. Namibia Institute of Public Administration and Management
19. Namibia Press Agency
20. Namibia Qualifications Authority
21. Namibia Sports Commission
22. Namibia Standards Institution
23. Namibia Statistics Agency
24. Namibia Tourism Board
25. Namibia Training Authority
26. Namibia University for Science and Technology
27. Namibia Water Corporation
28. National Art Gallery of Namibia
29. National Disability Council
30. National Heritage Council
31. National Housing Enterprise
32. National Theatre of Namibia
33. National Youth Council
34. National Youth Service
35. New Era
36. Security Enterprises and Officers Regulation Board
37. Social Security Commission
38. University of Namibia

III. Financial Institutions and Extra-Budgetary Funds (will resort under Ministry of Finance):

1. Agriculture Bank of Namibia
2. Development Bank of Namibia
3. National Special Risks Insurance Association
4. Namibia National Reinsurance Corporation
5. Game Products Trust Fund
6. Minerals Development Fund
7. Road Fund Administration
8. Trust Fund for Regional Development and Equity Provisions
9. Environmental Investment Fund
10. Motor Vehicle Accident Fund
11. War Veterans Trust Fund

Annex 3 – Sub - Grouping of Non-Commercial Public Enterprises

Non-Commercial Public Enterprises will remain under the ambit of their respective Portfolio Ministries. These include:

A. Regulatory Bodies:

1. Accreditation Board of Namibia (MITSD)
2. Communications Regulatory Authority of Namibia (MICT)
3. Electricity Control Board (MME)
4. Fisheries Observer Agency (MFMR)
5. Karakul Board (MAWF)
6. Meat Board (MAWF)
7. Namibia Agronomic Board (MAWF)
8. Namibia Board of Trade (MITSD)
9. Namibia Competition Commission (MITSD)
10. Namibia Estate Agents Board (MITSD)
11. Namibia Financial Institutions Supervisory Authority (MOF)
12. Namibia Qualifications Authority (MHETI)
13. Namibia Standards Institution (MITSD)
14. Namibia Tourism Board (MET)
15. Security Enterprises and Officers Regulation Board (MSS)

B. Promotion, Development, Advocacy & Research bodies:

1. National Commission on Research, Science & Technology(MHETI)
2. Namibia Fish Consumption Promotion Trust (MFMR)
3. National Disability Council (VP)
4. National Heritage Council (MEAC)
5. National Youth Council (MSYNS)
6. Namibia Sports Commission (MSYNS)
7. Diamond Board of Namibia (MME)

C. Educational and Training Institutions:

1. Namibia Institute for Mining Technology (MHETI)
2. Namibia Institute of Public Administration and Management (OPM)
3. Namibia University for Science and Technology (MHETI)
4. University of Namibia (MHETI)
5. Namibia College of Open Learning (MHETI)
6. Namibia Training Authority (MHETI)

7. National Youth Service (MSYNS)

D. Media Institutions:

1. Namibian Broadcasting Corporation (MICT)
2. Namibia Press Agency (MICT)
3. New Era (MICT)

E. Service providers (Cultural, Social and General):

1. Namibia Statistics Agency (NPC)
2. National Art Gallery of Namibia (MEAC)
3. National Housing Enterprise (MURD) *
4. National Theatre of Namibia (MEAC)
5. Social Security Commission (MLIREC)*
6. Namibia Water Corporation (MAWF)*

* The outcome of a study will clarify the ultimate role/position of these

Annex 4 –Financial Institutions and Extra-Budgetary Funds

All Financial Institutions and Extra-Budgetary Funds resort under the Ministry of Finance.

A. Financial Institutions:

12. Agriculture Bank of Namibia (MOF)
13. Development bank of Namibia (MOF)
14. National Special Risks Insurance Association (MOF)
15. Namibia National Reinsurance Corporation (MOF)

B. Extra-Budgetary (Statutory) Funds:

1. Game Products Trust Fund (MET)
2. Minerals Development Fund (MME)
3. Road Fund Administration (MOF)
4. Trust Fund for Regional Development and Equity Provisions (MURD)
5. Environmental Investment Fund (MET)
6. Motor Vehicle Accident Fund (MWT)
7. War Veterans Trust Fund (VP)