Annex 4

GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N$1.68 WINDHOEK - 29 December 1995 No. 1227

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GOVERNMENT NOTICE

No. 242 Promulgation of Stock Brands Act, 1995 (Act 24 of 1995), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 242 1995

PROMULGATION OF ACT
OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 24 of 1995: Stock Brands Act, 1995.

ACT

To consolidate and amend the law relating to the branding of stock; and to provide for incidental matters.

(Signed by the President on 15 December 1995)

ARRANGEMENT OF SECTIONS

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SCHEDULE

LAWS REPEALED

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

Definitions

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

"authorized person" means any person authorized under section 13 to exercise or perform the powers, duties and functions contemplated in that section;

"brand", used as a noun, means a mark made or placed on any stock for any purpose or a representation of a mark intended to be made or placed on any stock, excluding a mark declared not to be a brand under section 2;

"brand", used as a verb, means make or place a brand on any stock;

"branding iron" means an instrument used or intended to be used for branding stock;

"member of the Police" means a member as defined in section 1 of the Police Act, 1990 (Act 19 of 1990);

"Minister" means the Minister of Agriculture, Water and Rural Development;

"Ministry" means the Ministry of Agriculture, Water and Rural Development;

"owner", in relation to a registered brand, means the person in whose name such brand is registered;

"prescribed" means prescribed by regulation made under section 20;

"registered" means registered in terms of this Act, and "registration" has a corresponding meaning;

"Registrar" means the Registrar of Brands referred to in section 3(1);

"stock" means cattle and any other animal declared as stock under section 2;

"stock brand area" means a stock brand area defined under section 5(2);

"this Act" includes a regulation made or notice issued under this Act.

Minister's powers in relation to certain stock and brands

2. The Minister may by notice in the *Gazette* declare -

(a) any kind of animal as stock;

(b) any mark not to be a brand,

for the purposes of this Act.

Registrar of Brands

3. The Director: Veterinary Services in the Ministry shall be the Registrar of Brands, and shall, subject to the control of the Minister, exercise or perform the powers, duties and functions conferred upon or assigned to the Registrar by or under this Act.

Register of brands

4. The Registrar shall keep a register of all brands registered under this Act.

Prescribed brands

5. (1) The Minister shall prescribe brands in respect of stock, including the order in which such brands shall be allocated in terms of section 6(2).

(2) The Minister may, in the regulations contemplated in subsection (1) -

(a) divide Namibia into different stock brand areas;

(b) determine the figures, letters or other symbols to be used in respect of the brands for the different stock brand areas.

(3) If the definition of a stock brand area under subsection (2) incorporates the description of a boundary of any other area which was defined under any law, the amendment of such description shall not affect that definition.

Application for registration of brand

6. (1) Subject to the provisions of this Act, every person who -

(a) is, on the date of commencement of this Act, the owner of stock in Namibia other than in an area contemplated in section 11(1), shall within 6 months of that date;

(b) becomes, after such date, the owner of stock in Namibia other than in such area, shall within 14 days of the date on which he or she becomes such owner;

(c) is, on such date, or becomes thereafter, the owner of stock in Namibia in such area, may at any time,

and whether a brand has already been registered or not in his or her name in terms of the provisions of any law repealed by this Act, apply to the Registrar in the prescribed form for the registration of a brand in his or her name in respect of such stock.

(2) If the Registrar is satisfied that an application in terms of subsection (1) is in order and that the prescribed fee has been paid, he or she shall allocate the prescribed brand to the applicant, register such brand in his or her name and issue to him or her a certificate of registration of such brand in the prescribed form: Provided that the Registrar may, if the applicant is the owner of stock in different stock brand areas of Namibia, register a separate brand in the applicant's name in respect of each stock brand area.

Branding of stock

7. (1) Subject to the provisions of this Act, every owner of stock in Namibia other than in an area contemplated in section 11(1), shall -

(a) within six months of the date of the certificate of registration referred to in section 6(2), and whether such stock already bear a brand or not, brand his or her stock with a brand registered in his or her name: Provided that this subsection shall not apply in respect of stock which already bear a brand complying with the requirements of this Act, if such brand was registered in such owner's name in terms of the provisions of any law repealed by this Act, and has again been registered in his or her name in terms of this Act;

(b) within 30 days of the date on which he or she becomes the owner of stock which are acquired after the date contemplated in paragraph (a), and whether such stock already bear a brand or not, brand such stock with a brand registered in his or her name;

(c) if a brand on any such stock becomes invisible or indistinct, again brand the stock in question in the prescribed manner;

(d) where an animal is erroneously branded on a place other than the place prescribed, forthwith brand such animal on the prescribed place, as well as on all places which, according to the prescribed order of branding places, lie between the prescribed place and the place where such animal was erroneously branded.

(2) No person shall in any manner dispose of any stock which are subject to the provisions of subsection (1), other than stock in respect of which an exemption has been granted under section 11, unless such stock have been branded in the prescribed manner with the registered brand.

(3) No person shall brand stock in any communal area in Namibia unless stock is branded in the presence of -

(a) the chief or headman of the area within which the owner of such stock lives or a deputy or representative of such chief or headman; or

(b) five residents of the neighbourhood in which the branding takes place, who are also the owners of registered brands in terms of this Act.

Transfer of registration of brand

8. (1) Subject to the provisions of this Act, any owner of stock may in the prescribed form apply to the Registrar for the transfer of the registration of a brand from the name of any other person into his or her own name.

(2) An application in terms of subsection (1) shall be accompanied by the consent in writing of the owner of the brand in question to the proposed transfer.

(3) If the Registrar is satisfied that an application in terms of subsection (1) is in order and the prescribed fee has been paid, he or she shall transfer that registration of the brand in question into the name of the applicant, and issue to him or her a certificate of registration of such brand in the prescribed form.

Transfer or cancellation of registration of brand after death of owner

9. (1) Any person acquiring in any manner any stock from the estate of a deceased owner of a brand registered in respect of such stock, may apply in the prescribed form to the Registrar for transfer of the registration of such brand into his or her own name.

(2) If the Registrar is satisfied that an application in terms of subsection (1) is in order and the prescribed fee has been paid, he or she shall transfer the registration of the brand in question into the name of the applicant, and issue to him or her a certificate of registration of such brand in the prescribed form.

(3) If the Registrar is satisfied that the owner of a registered brand is deceased and no application is made in terms of subsection (1) for the transfer of the registration of such brand within two years after the death of such owner, he or she shall cancel the registration of such brand.

Cancellation of brand for disuse and cancellation at request of owner

10. (1) (a) If it appears to the Registrar that a person does not make use of a brand registered in his or her name, he or she may request such person in the prescribed form to show cause within a period specified in such request, not being less than three months, why the registration of such brand should not be cancelled.

(b) If within the period so specified cause is not shown to the satisfaction of the Registrar for the continuation of the registration of the brand in the name of such person, he or she shall cancel such registration.

(2) If for a period of two years a person did not make use of a brand registered in his or her name, such person shall within a period of 30 days after the expiry of the said period of two years notify the Registrar in writing thereof, and upon receipt of such notice the Registrar shall cancel the registration of such brand.

(3) For the purposes of subsections (1) and (2), a person shall be deemed to make use of a brand as long as he or she has any stock lawfully bearing such brand.

(4) The owner of a registered brand may in writing request the Registrar to cancel the registration of such brand, and upon receipt of such request the Registrar shall cancel such registration.

Exemptions

11. (1) The Minister may by notice in the *Gazette* declare that such provisions of this Act as may be specified shall not apply in any area defined in such notice, or in respect of any kind of stock specified therein.

(2) If the definition of a stock brand area under subsection (1) incorporates the description of a boundary of any other area which was defined under any law, the amendment of such description shall not affect that definition.

(3) Subject to subsection (1) -

(a) the Registrar may upon application in writing of the owner of stock, exempt such owner for such period and on such conditions as the Registrar may determine, from the provisions of section 6, 7 or 10(2):

(b) the provisions of sections 6 and 7 shall not apply in respect of -

(i) stock which have yet attained the age contemplated in any regulation made under section 20(1)(f);

(ii) pedigree stock which have been registered in a pedigree-register approved by the Registrar: Provided that such stock shall bear such marks or other means of identification as may be approved by the Registrar.

Notification of change of address

12. If the owner of a registered brand changes his or her address, he or she shall within 14 days after such change, notify the Registrar in writing of his or her new adddress.

Authorized persons and investigations

13. (1) This section, in so far as it provides for a limitation on the fundamental rights contemplated in Subarticle (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of any person's home, correspondence or communication, is enacted upon the authoirty conferred by that Subarticle.

(2) The Registrar may, for the purposes of the effective application of this Act, at any time authorize one or more staff members in the public service under his or her control, who shall subject to the direction and control of the Registrar, exercise and perform the powers, duties and functions conferred or imposed upon an authorized person by or under this Act and perform such other functions as the Minister may determine.

(3) An authorized person shall at the time of his or her authorization be furnished with a certificate of authorization in the prescribed form.

(4) Subject to subsection (5), an authorized person may, for the purposes of the application of this Act -

(a) *mutatis mutandis* in accordance with chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), at any reasonable time and without prior notice enter any premises and -

(i) inspect or cause to be inspected any stock, carcase or hide of any stock or branding iron or other instrument for marking of stock or any certificate or document issued or purporting to have been issued under this Act, found by him or her on or in such premises, and demand from the person in charge thereof any information regarding such stock, carcase, hide, branding iron, other instrument, certificate or document;

(ii) seize and remove or cause to be removed any such stock, carcase, hide, branding iron, other instrument, certificate or documenht which he or she may lawfully inspect under this section which in his or her opinion may afford evidence of a contravention of any provision of this Act;

(b) require a member of the Police, or request any other person, to assist him or her as an interpreter or otherwise in the exercise or performance of his or her powers, duties or functions under this Act.

(5) When an authorized person exercise or performs a power or duty under this Act in the presence of any person affected thereby, the authorized person shall on demand by such person produce to him or her the certificate issued to such authorized person in terms of subsection (3).

(6) A member of the Police required, or any other person requested, by an authorized person to assist him or her as provided in subsection (4)(b), may accompany such authorized person in the exercise or performance of his or her powers, duties or functions as if such member or person were an authorized person.

(7) Any employer, employee or other person in charge of any premises contemplated in subsection (4) on which persons are employed, shall at all times furnish such assistance as are reasonably required by an authorized person in order to enable him or her to exercise or perform his or her powers, duties or functions effectively.

(8) The Registrar may exercise any powers which are, under this section, conferred upon an authorized person.

(9) For the purpose of this section, "premises" includes any building or structure, or part thereof, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.

Appeals

14. A person aggrieved by a decision of the Registrar under this Act may, within 60 days after the date of such decision, appeal to the Minister against such decision.

Duties and powers of poundmaster

15. (1) If any stock bearing one or more registered brands are impounded in a pound, the poundmaster in question shall, in addition to any other notice which he or she may be required to give in terms of any other law, forthwith send by post or deliver or cause to be delivered to the owner of such brand or of the latest brand, as the case may be, a notice of such impoundment.

(2) The poundmaster shall be entitled to recover, on the release or sale of the stock in question, the prescribed fee in respect of a notice in terms of subsection (1).

Prohibited branding of stock

16. No person shall -

(a) brand any stock with a registered brand without the authority of the owner of such brand;

(b) brand any stock with a registered brand otherwise than in the prescribed manner;

(c) brand any stock with a brand which is registered in the name of a person who is not the owner of such stock;

(d) use more than one registered brand in respect of stock in the same stock brand area.

Offences and penalties

17. (1) Any person who -

(a) fails to comply with a provision of section 6(1), 10(2) or 12;

(b) fails to comply with or contravenes a provision of section 7;

(c) contravenes a provision of section 16;

(d) has in his or her possession without lawful reason, a branding iron that can be used for making or placing on stock a brand which he or she is, in terms of this Act, prohibited from making or placing on any stock;

(e) has in his or her possession any stock branded after the commencement of this Act, otherwise than in accordance with or in a manner allowed by the provisions of this Act;

(f) alters, mutilates or cancels any registered brand on any stock;

(g) without lawful reason has in his or her possession, or sells, or otherwise disposes of, or offers for sale or disposal in any other manner, to any other person any stock on which a registered brand has been altered, mutilated or cancelled;

(h) hinders or obstructs the Registrar or an authorized person or a member of the Police in the exercise of his or her powers or the performance of his or her duties under this Act;

(i) fails or refuses to produce, when required in terms of this Act by the Registrar or an authorized person or a member of the Police to do so, any stock, instrument, document or other article in his or her possession or under his or her control;

(j) with intent to evade or defeat the provisions of this Act, alters in any manner a certificate issued in terms of this Act;

(k) in terms of section 6 obtains for himself or herself, the registration of more than one brand in respect of stock kept in the same stock brand area;

(l) in an application made in terms of this Act, knowingly makes or causes to be made a statement which is false in a material respect;

(m) falsely represents himself or herself to be the Registrar or an authorized person,

shall be guilty of an offence and liable on conviction to a fine not exceeding N$4 000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

(2) Notwithstanding anything to the contrary contained in any law, a magistrate's court shall have jurisdiction to impose any penalty provided for in subsection (1).

Proof of certain facts

18. In any legal proceedings a certificate purporting to have been issued by the Registrar regarding the registration or the transfer or cancellation of the registration of a brand in terms of this Act, or the ownership of a registered brand, shall upon production in such proceedings be *prima facie* proof of the facts certified therein.

Restriction of liability

19. No person, including the State, shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.

Regulations

20. (1) Subject to the other provisions of this Act, the Minister may make regulations in relation to -

(a) anything which is required or permitted to be prescribed under this Act;

(b) the size, shape, pattern and composition of prescribed brands;

(c) the size, shape and construction of branding irons;

(d) the person by whom, and the conditions under which, branding irons may be made, repaired, altered and supplied;

(e) the manner in which persons who have ceased to be owners of registered brands, or their representatives, shall dispose of any branding irons relating to such brands;

(f) the age which stock shall have attained before they may be branded;

(g) the manner in which, the parts on which and the material with which stock shall or shall not be branded, and the position in which successive brands shall be made or placed in relation to one another on stock;

(h) the fees payble in terms of this Act;

(i) such other matters as the Minister may consider necessary or expedient to prescribe for the purposes of this Act.

(2) (a) The Minister may make different regulations in respect of different kinds of brands or stock and different stock brand areas.

(b) A regulation may prescribe penalties for any contravention of or failure to comply with its provisions, but not exceeding a fine of N$2 000 or imprisonment not exceeding a period of six months.

Brands provided for in other laws

21. (1) Subject to the provisions of this section, the provisions of this Act shall be in addition to and not in substitution for the provisions of any other law not repealed by this Act authorizing or requiring the branding stock.

(2) (a) A person or the holder of an office required by the Minister to do so, shall within the period specified by the Minister, submit to the Registrar any brand with which any stock are authorized or required to be branded in terms of a law referred to in subsection (1).

(b) If the Registrar is satisfied that such brand is not so similar to a registered brand as to be easily confused with or convertible into such brand, he or she shall register such brand in the prescribed manner free of charge.

(c) If the Registrar is not so satisfied, he or she shall submit the matter to the Minister, who may make such order as he or she thinks fit for the registration of the brand in question or of any other brand in its stead.

(d) Upon registration of such other brand the use thereof shall be deemed to have been authorized or required, as the case may be, in terms of the relevant law instead of the brand in whose place it was so registered.

(3) If a brand is registered in terms of subsection (2), the other provisions of this Act shall not apply in respect thereof.

(4) The use of a brand referred to in subsection (3) in accordance with the law authorizing or requiring its use, shall not preclude the owner of the stock on which it is made or placed from making or placing or retaining on such stock any other appropriate brand registered in his or her name.

Delegation of powers

22. (1) The Minister may, subject to such conditions as he or she may determine, delegate or assign in writing to a staff member in the public service employed in the Ministry any power, duty or function conferred upon the Minister by or under this Act other than a power conferred by section 20.

(2) The Registrar may, subject to such conditions as he or she may determine, delegate or assign to any such staff member under his or her control, any power, duty or function conferred upon the Registrar by or under this Act.

(3) The Minister or the Registrar, as the case may be, shall not be divested of a power, duty or function delegated or assigned under subsection (1) and he or she may amend or set aside anything done in the exercise of such power under such delegation or in the performance of such function or the carrying out of such duty under such assignment.

(4) The Minister or the Registrar, as the case may be, may at any time withdraw the delegation of a power or assignment of a function or duty in terms of subsection (1).

State bound

23. This Act shall bind the State.

Repeal of laws

24. The laws specified in column 2 of the Schedule are hereby repealed to the extent set out in column 3 thereof.

Short title and commencement

25. (1) This Act shall be called the Stock Brands Act, 1995, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date determined under subsection (2) in relation to such provisions.

SCHEDULE

LAWS REPEALED

Column 1	**Column 2**	**Column 3**
No. and year of law	**Title**	**Extent of repeal**
Proclamation 15 of 1923	Native Stock Brands Proclamation, 1923	The whole
Ordinance 8 of 1931	Stock Brands Ordinance, 1931	The whole
Proclamation 59 of 1958	Rehoboth Gebiet (Further Extension of Laws) Proclamation, 1958	Section 2, in so far as it relates to the Stock Brands Ordinance, 1931 (Ordinance 8 of 1931)
Proclamation 205 of 1959	Native Stock Brands Amendment Proclamation, 1959	The whole