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PRESS RELEASE

WILL NEEEF REDUCE POVERTY?

The Construction Industries Federation of Namibia (CIF) recently conducted a survey amongst its members in respect of the 2015 NEEEF (New Equitable Economic Empowerment Framework) Policy, as well as the NEEEF Bill (National Equitable Economic Empowerment Framework), which is currently under review. Within a week, 115 enterprises had responded to the survey. Respondents *inter alia*, raised concern about the definition of "previously disadvantaged"; requested more clarity about which businesses would affected; questioned if indeed NEEEF in its current format could achieve it purpose and objective. Respondents further questioned the legality of NEEEF in its current format.

Bärbel Kirchner, consulting general manager of the Construction Industries Federation of Namibia says: "The general consensus is that empowerment initiatives should not lead to distinctions based on race, which many respondents considered as unconstitutional and that it would negatively impact race relations in Namibia. Instead, *poor Namibians*, regardless of racial origins, should benefit through increased focus and monitoring of *already existing empowerment* efforts. Respondents were adamant that wealthy Namibians, irrespective of race, should not become beneficiaries of any prospective additional empowerment efforts due to the proposed NEEEF Policy or NEEEF Bill.

"Respondents to the survey are of the opinion that the current level of education and skill in Namibia is still too low in order to be able to enforce the proposed 25% ownership of disadvantaged Namibians, or to be able to enforce 50% board or management control by disadvantaged Namibians. Therefore, concerted efforts are required to provide quality education. In addition, many of the small-to-medium-sized enterprises that are members of the CIF, require greater access to finance, training, support with in respect of marketing and to be geared to secure contracts in the industry."

As the employers' organisation of one of the leading economic sectors in Namibia, the Construction Industries Federation of Namibia regarded it as prudent to engage its 465 member base, which exists of sole proprietors, partnerships, close corporations or companies operational in the building and construction sector. Enterprises were surveyed in order for the CIF to give feedback on both documents, namely the NEEEF Policy and the NEEEF Bill. This initiative was taken to support the consultation process which was initiated on 5 February 2016 by the Right Honourable Saara Kuugongelwa-Amadhila, Prime Minister of the Republic of Namibia. The Prime Minister Office (PMO) had referred stakeholders to the draft bill on the PMO's website and had requested submissions before 25th February 2016, the date of which now has been extended to 31 March 2016.

The Namibian government's past persistent efforts to reduce poverty amongst its citizens has seemed to have paid off, as the overall poverty rate is said to have reduced in Namibia. Official statistics also show that the poverty rate has dropped from 93.3% in 1993, which was three years after Namibia's independence, to 28.7% in 2010. However, poverty and the difference between incomes is still high.

The Construction Industries Federation of Namibia therefore understands and supports the Namibian Government's efforts to "eradicate poverty", spear-headed by His Excellency Dr Hage Geingob, President of the Republic of Namibia. The federation said however that despite common understanding and agreement that the reduction of poverty in Namibia needed to be addressed, the strategy of achieving "poverty eradication" via NEEEF's principles was not sustainable, and would very likely achieve the opposite; i.e. that the poor will get poorer.

Respondents of the survey are generally of the opinion that it is highly unlikely that the 2015 NEEEF Bill in its current format can achieve its purpose and objectives and is confident that with further stakeholder involvement, the feasibility of the proposed policy in Namibia can be further reviewed and fine-tuned.

Bärbel Kirchner says: "Results of the survey reflect that in order to tackle poverty sustainably, concerted and joint efforts need to be taken to improve the access to quality education for young and adult learners. This will not only ensure that the needs of the labour market will be more effectively met, but more importantly, that Namibia's youth reach their potential and can look into the future with hope and aspirations. They should be the generation that will cement the peaceful change that was started 25 years ago."

Bärbel Kirchner says: "Our industry is not ready for the compliancy requirements of the six pillars as stipulated in 2015 NEEEF Policy, as it is too rigid and is likely to force many employers out of business., which is against the purpose and objective of NEEEF. More consultation is needed. For example, the previously proposed compliancy requirements as in the 2011 NEEEF Policy would have allowed greater flexibility yet within the constraints of achieving an overall compliancy score. The NEEEF Policy 2011 determined that businesses needed to secure a score of 50 points to be NEEEF compliant. "Underachievement" in one of the pillars could have been offset against "overachievement" in another area, without having to comply with the ownership and management control criteria. This would have allowed for greater flexibility and for business to retain their current *status quo*."

"However, we feel confident that our Government will continue to engage us to and allow for extensive consultation so that an optimal solution can be found to achieve the purpose and objectives of NEEEF, which essentially boils down to reducing the extreme income gap in our country and to totally "eradicating poverty". There is no doubt that we must tackle the issue of poverty and raise the standard of living of disadvantaged Namibians. However, the question is whether NEEEF is the right vehicle to achieve that."

It is important to note that in order to ensure compliance with NEEEF as per the current Bill, all newly registered entities, be it a partnership, private company or close corporation would be required to have as one of its partners, shareholders or members a "previously disadvantaged" person, who must own at least 25% per cent of the equity in the newly registered entity. Existing entities would be compelled to comply by virtue of Government only issuing authorisations, licenses, work permits etcetera to those entities who comply with the provisions of the proposed NEEEF Bill. It appears that the NEEEF Bill is not sector specific and will find application across the entire economic sector of Namibia; and that all private sector enterprises, which includes sole proprietorships, will be required to comply with the provisions of the NEEEF Bill.

End

Key Insights From Survey

The Construction Industries Federation of Namibia has undertaken a research initiative to poll the views of its members. 115 responses were received. Key insights include:

1. **Definition of "Previously Disadvantaged"**

- The majority said that "previously disadvantaged" should be rephrased to "currently disadvantaged", irrespective of historical factors.
- Some highlighted discrepancies about the definition of "previously disadvantaged", which in the draft bill includes "*racial disadvantaged persons, women and disabled persons*". The draft bill also highlights that part of the purpose and objective of NEEEF is to "*increase the extent to which racially disadvantaged women own and manage existing and new private sector enterprises…"* The two documents are thus not aligned in this respect. Does "previously disadvantaged" include women per se or "previously racially disadvantaged" women only?
- The youth, according to the NEEEF Bill and the NEEF Policy do not appear to be considered as part of the definition. Yet, according to the Prime Minister Office, the definition of "youth" can be considered as persons being between 14-35 year olds. Youth makes up 56% of Namibia's total population. The current unemployment rate of Namibia is said to be 28%, of which 43% are unemployed youth. The youth thus constitutes a large part of the Namibian population that can benefit from further learning and development, and business opportunities.

2. **Ownership**

- Respondents to the survey were very aggrieved about the proposed the "ownership pillar" as it would not be possible to achieve a transfer of ownership without simultaneously further increasing the income gap between rich and poor, as only the "connected elite" would be in the position to have access to finance and the contacts. It is also of concern that there are too few qualified individuals that would add further value to productive assets, due to other interests and business commitments.
- Respondents also rejected NEEEF as a whole since qualifying criteria in order to benefit from the New Equitable Economic Empowerment Framework according to the NEEEF Bill and NEEEF Policy were considered as racially determined. NEEEF in the current format should

not be implemented. Respondents reiterated that distinctions based on race, could be considered as unconstitutional.

3. Board and Management Control

- Enforcing a 50% board or management control for disadvantaged Namibians would be difficult for enterprises, due the lack of suitably qualified people. Existing affirmative action legislation, such as the Affirmative Action (Employment) Act of 1998 and the Affirmative Action (Employment) Amendment Act of 2007 that address the employment equity in enterprises with personnel equal to or more than 25 individuals, should instead be reinvigorated and effectively monitored.

4. **Definition for "Enterprises"**

- Most respondents felt that the definition of "enterprises" was too vague and that it required further clarification. As it was referred to in the NEEEF Policy and NEEEF Bill, it seemed to include any type and size of business, from sole proprietors and family-run businesses to large companies. Many businesses could become unprofitable and might have to close down, entrepreneurism and investment could be squashed which could lead to unemployment and a downturn of Namibia's economy.

- According to the current definition, it appears that even professionals such as scientists, medical practitioners, lawyers, architects, accountants, etc would be affected. This could lead to emigration of highly trained or qualified people from Namibia, which already has a serious lack of qualified human capital.

- It was generally considered that restricting "previously advantaged" individuals from conducting business was unconstitutional and would also reduce investment into new endeavours.

5. Human Resources And Skills Development

- Respondents emphasised the need for education and skill development and that businesses needed to support this drive. However, concern was raised that the VET levy of 1% of annual payroll has not received the desired results, and that the industry experienced a huge lack of skills.

- Respondents felt that due to the lack of qualification and skill amongst the "previously disadvantaged", changing the shareholding within enterprises as well as changing the management structure within organisations could not be achieved and feared that it could affect the profitability and growth of companies, which in turn could have an impact on employment.

6. Entrepreneurship Development and Marketing

- Respondents were generally in support of assisting smaller companies to better establish themselves. In the construction industry, this was normally achieved through sub-contracting of work to small-and-medium-sized enterprises. However, in terms of procurement, enterprises were also looking at performance and price. The industry would need time to find new businesses who can supply goods and services as required. Delays and price increases could be expected until the market has enough well- established companies competing with each other. In construction, this could lead to late delivery of projects.

- The new Procurement Act 2015 is also making provisions for entrepreneurship development which are extensive to cover the interests of the construction industry. In addition, depending on the size of enterprises, respondents would be inclined to support mentorship programmes.

7. Value Addition, Technology and Innovation

- Respondents felt that any value addition, use of technology and innovation should be welcomed and further encouraged. However, by linking the sixth pillar to ownership as well as board and management control, was restrictive and would not encourage value addition, innovation and the use of new technologies. In fact, in their opinion, it would be counterproductive. However, in the construction sector there was limited opportunity for value addition, which was generally limited to fixing materials into permanent place. For the construction industry, it therefore would be difficult to score on the sixth pillar.
- The cost of raw material, transport costs, and the size of the domestic market could also be an obstacle to manufacturing of building materials, unless the raw material was available in Namibia. Transport costs would include both the transport for raw material as well as the transport of finished goods to the regional market.

8. Access to Finance

- Respondents generally were of the opinion that access to finance needed to improve. However, related risks needed to be minimised by assisting companies with their business plans. Increased focus on entrepreneurship and financial planning is needed. However, the “opportunity costs” of financial deals needed to also be taken into consideration.

9. Legal Considerations

- It needed to be established by the legal profession whether a NEEEF ACT can override all other Acts, as was proposed in the NEEEF Bill. It also needed to be established if some sections of the Namibian Constitution could be regarded as more important than other sections of the constitution, as the NEEEF Bill appears to find its legal justification in section 23 of the Namibian Constitution, which however, appears to clash with the provisions of fundamental human rights as enshrined in the Namibian Constitution.
- The NEEEF Bill appears to be vague on some empowerment criteria or so-called pillars, which however are more comprehensively specified in the NEEEF Policy 2015. The Act also allows for the *National Programme for Economic Transformation and Empowerment* to be reviewed every three years by the *Council*, the composition of which is proposed to be Ministers of Government. This could lead to even greater uncertainty for enterprises to conduct business.
- The NEEEF Bill also provides for the development of a *National Programme for Economic Transformation and Empowerment*, *Economic Empowerment Standards* and *Sector Specific Transformation Charts*. This could leave too much room for interpretation and could lead to too much power to the executive government to interpret the law and put it into action.
- The NEEEF Bill is however specific about the 25 % share of ownership for the “previously disadvantaged” in new enterprises. Without such a share, new companies cannot be established.
- The Bill also intends to give power to the Government to increase the proposed share of 25% owned by the “previously disadvantaged in enterprises established by the “previously advantaged”. Part IV Section 23 (1) stipulates *“ ….or such higher percentage as may be determined by Minister by notice in the Gazette.”* It appears that no further involvement of the legislative or the judiciary branch of the political system would be required.

- Other legislations, such as Namibia's Constitution, the Public Procurement Act, The Company Act, Foreign Investment Act would need to be taken into consideration during consultations and before stakeholders can make a comprehensive submission to the PMO regarding the NEEEF Bill.

Public Procurement Act 2015

- For example, a new Public Procurement Act was passed in 2015. The Construction Industries Federation of Namibia says that the advantage of the new act is that it should ensure greater uniformity of procurement procedures amongst all levels of government and state-owned enterprises and that, in principle, it should allow for greater transparency. The federation also points out that the new procurement legislation allows for greater Namibianisation as well as the increased involvement of micro, small and medium-sized enterprises.
- However, it is important that companies operating in particular in the construction sector, would be engaged by the authorities to further be able to understand the provisions of the Public Procurement Act and also to understand the dangers of "tenderpreneurism".

Quotes:

- "*Without having full insight and comprehension of the Public Procurement Act (2015) and the proposed changes to the Foreign Investment Act, it would be difficult to fully consider the implications of the NEEEF Bill," says Ms Bärbel Kirchner, consulting general manager of the Construction Industries Federation of Namibia.*

10. Proposed Council and Committee

- The Council as stipulated in the NEEEF Bill would leave procurement in significant control of government. The proposed composition of the Council suggests that members of the cabinet of the Namibian government would run it. The Council - aka members of the cabinet - would also be in the position to "*by notice in the Gazette permit government bodies to specify qualification criteria for procurement and other economic activities which exceed those set by the Council".*
- In terms of the composition of the Council, provision was made for members of the Cabinet responsible for economic planning, poverty eradication and social welfare, labour and

industrial relations and employment creation, respectively. The minister, e.g. responsible for education, would also need to be explicitly mentioned.

- The proposed Committee would result in additional costs and red tape. Sub committees to support the Council and the Committee would also add to the costs. No private sector involvement appears to have been made allowance for.

11. Exemptions

- It needs to be made very clear if economic empowerment measures would also be applicable to foreign companies. Especially in Namibia, there is an increasing involvement of Chinese companies. Economic empowerment measures can change the level of playing field drastically to the disadvantage of productive Namibian enterprises. At the same time, it also needs be explained whether companies owned by the “previously disadvantaged” would have to adhere to the same economic empowerment measures.

12. Costs and “Ease” of Doing Business

- Respondents were concerned about the increased costs and red tape becoming a hindrance to business. Corporate taxation of 32%, a training levy of 1% for businesses with an annual payroll of 1 million Namibian Dollars or more were already financial constraints to businesses.
- In addition, the recently introduced Employment Services Act, which was perceived to overregulate the recruitment procedures and affirmative action legislation, had financial, legal and administrative implications, which were considered as a burden to conducting business and creating employment.
- In addition, despite understanding the urgency of “eradicating poverty” and all working together to achieve that solidarity tax on personal income “to eradicate poverty” would be another tax that entrepreneurs would need to consider. The real cause of poverty needed to be addressed - education and skills development.
- Implications of NEEEF would lead to additional costs to ensure compliance with the proposed criteria or the so-called pillars, without the promise of adequate returns in the short-term.
- This may lead discouraging any “previously advantaged” people to set up business in Namibia.

13. Economic Implications

- Respondents were very concerned about the economic implications of NEEEF. Even though it would partially achieve distribution of equity it would benefit only the already wealthy "previously disadvantaged". In fact, respondents felt that the income gap between rich and poor would further increase and that the poor would be getting poorer as was the case in South Africa and Zimbabwe.
- It would lead to capital flight, companies divesting, lack of investment, increase in prices and inflation. It would stunt economic growth and increase unemployment.
- NEEEF in its current format would not address poverty, or increase the quality of life of Namibians or indeed reduce the income gap between rich and poor Namibians.

Note to the Editor:

Below a summary of previous NEEEF 2011 Policy

- NEEEF 2011 determined that a business would be scored to the extent its practices would lead to economic empowerment of the "Previously Disadvantaged" (PD) . The five criteria according to NEEEF 2011 are: ownership/shareholding; management control and equity development; skill development; development of entrepreneurs; and community development. For each of these so-called pillars a score of 20 points is possible, the maximum score being 100 points. A business would need to secure a score of 50 points to be NEEEF compliant. *"Underachievement" in one of the pillars can be offset against "overachievement" in another are, with no particular emphasis on one criterion.*

- Scoring under NEEEF 2011: For training, a contribution towards skill development of 1.5% of annual payroll for which companies would score 10 points, for a maximum of 2% of annual payroll companies can secure a total of 20 points. With regard to shareholding in the business, a minimum share of 25% held by PD would result in a score of 10 points. For every additional 7.5% shareholding an additional score of 1 point can be secured. The minimum in terms of employment equity and management control is 50% which leads to a score of 10 points. If it increases by 10% another two points can be scored up to 20 points for 100% management control and employment equity. NEEEF compliance can be also secured if a company makes efforts to procure from suppliers that are PD (ideally 50%) or assists in the development of PD entrepreneurs. Businesses that invest into community development projects can score up to 20 points if they were to invest 2% of after tax profits; it is 10 points for an investment of 1% of after tax profits.