(d) in relation to a body corporate, trust, association or any other legal entity in which the controlling interest or benefit is held by a foreign national; 

(d) by the substitution for the definition of “Minister” of the following definition: 

“Minister” means the Minister [of Local Government and Housing] responsible for regional government affairs.”

(e) by the insertion after the definition of “Minister” of the following definitions:

“Namibian citizen” means a Namibian citizen as set out in Article 4 of the Namibian Constitution, and includes a Namibian legal entity and a person who is domiciled in Namibia or a permanent resident of Namibia as contemplated in section 22 and 26 of the Immigration Control Act, 1993 (Act No. 7 of 1993);

“Namibian legal entity” means -

(a) a company whose controlling interest is held by Namibian citizens;

(b) a close corporation whose controlling interest is held by Namibian citizens;

(c) a body corporate, trust, association or any other legal entity whose controlling interest or benefit is held by Namibian citizens.”

Amendment of section 6 of Act No. 22 of 1992

2. Section 6 of the principal Act is amended by the insertion after subparagraph (iii) of paragraph (a) of subsection (1) of the following subparagraph:

“(vi) is able to communicate, read and write in the official language of Namibia.”.

Amendment of section 18 of Act No. 22 of 1992, as amended by section 3 of Act No. 16 of 2010

3. Section 18 of the principal Act is amended by the addition after subsection (3) of the following subsection:

“(4) A member of a regional council who is elected as member of the management committee of the regional council under this section is not eligible for election as member of the National Council under section 26.”

Amendment of section 23 of Act No. 22 of 1992, as amended by section 9 of Act No. 30 of 2000 and by section 2 of Act No. 12 of 2002

4. Section 23 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) appoint, [after consultation] with the prior written approval of the Minister, a person as the chief regional officer of the regional council -

(i) who shall be the chief executive officer of the regional council; and

(ii) who shall, subject to the control and directions of the regional council, be responsible for carrying out the decisions of the regional council and for the administration of the affairs of the regional council:”.

Amendment of section 28 of Act No. 22 of 1992, as amended by section 6 of Act No. 30 of 2000

5. Section 28 of the principal Act is amended in subsection (1) -

(a) by the substitution for paragraph (i) of the following paragraph:

“(i) to construct, acquire or hire, let, sale or otherwise dispose of immovable property;” and

(b) by the substitution for subparagraph (i) of paragraph (j) of the following subparagraph:

“(i) to acquire or hire, let, sell or otherwise dispose of immovable property or any right in respect of immovable property to and subject thereto that the Minister may determine the method of sale, excluding sale by auction, letting or hypothecation to be applied by a regional council in respect of such immovable property.”

Insertion of Part VI A in Act No. 22 of 1992

6. The following Part is inserted in the principal Act after Part VI:

“PART VIA

PROHIBITION OF SALE OF IMMOVABLE PROPERTY IN SETTLEMENT AREAS

Prohibition of sale of immovable property in settlement areas to foreign nationals

30A. (1) A foreign national may not acquire immovable property in a settlement area.

(2) Subject to subsection (7), an owner of immovable property within a settlement area who intends to alienate the property must alienate the property to a Namibian citizen.

(3) Notwithstanding anything to the contrary in any law, no agreement of alienation to a foreign national of immovable property situated in a settlement area entered into by the owner of the property is valid, if such immovable property is alienated contrary to this section.
(4) Whenever one or more members of a legal entity which is the owner of immovable property situated within a settlement area intends to alienate or transfer -

(a) in the case of a company, any shares of the company to another person;

(b) in the case of a close corporation, any interest in the close corporation, or any portion of such interest, to another person, or

(c) in the case of a body corporate, trust, association or any other legal entity any interest in such body corporate, trust, association or legal entity, or any portion of such interest, to another person,

that results in the controlling interest being owned by a foreign national, it shall, for the purposes of subsection (2), be construed that the legal entity in its capacity as owner of the immovable property intends to alienate such immovable property.

(5) An owner of immovable property situated in a settlement area who intends to have a usufruct registered over the whole or part of the immovable property in favour of a person, other than a relative of the owner, it is, for the purposes of subsection (2), deemed that the owner intends to alienate the immovable property, and for the purpose of this subsection "relative" means a spouse, child, parent or sibling of the owner or a dependant of the owner.

(6) The registrar of deeds may not register a notarial lease, usufruct or the transfer of immovable property situated in a settlement area in the name of a foreign national or a diplomatic mission unless the written approval of the Minister is submitted to the Registrar.

(7) Subsection (2) does not apply where immovable property is alienated -

(a) in the administration of a deceased estate or in accordance with a redistribution of assets in a deceased estate between heirs, legateses and beneficiaries of a will;

(b) by a co-owner of such immovable property to another co-owner thereof, except where -

(i) the other co-owner is a foreign national; or

(ii) such immovable property is owned by a company or close corporation;

(c) by mortgaged bond as security to -

(i) a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

(ii) a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 2 of 1986);

that results in the controlling interest being held by another person; and

“body corporate” means a body corporate established or recognised by law, but does not include a company or close corporation;

(b) by the insertion after the definition of “chairperson” of the following definitions:

“close corporation” means a close corporation registered under the Close Corporations Act, 1988 (Act 26 of 1988);

“company” means a company registered in terms of the Companies Act, 2004 (Act 28 of 2004);

“controlling interest”, in relation to -

(a) a company, means -

(i) 51 per cent or more of the issued share capital of the company;

(ii) 51 per cent or more of the voting rights in respect of the issued shares of the company; or

(iii) the power, either directly or indirectly, to appoint or remove the majority of the directors of the company without the concurrence of any other person;

(b) a close corporation, means 51 per cent or more of the interest in the close corporation; or

(c) a body corporate, trust, association or any other legal entity, means 51 per cent or more of the controlling interest vesting in its members or beneficiaries;

(c) by the insertion after the definition of “chief regional officer” of the following definition:

“foreign national” means -

(a) a person who is not a Namibian citizen;

(b) in relation to a company, a company incorporated under the laws of any country other than Namibia, or under the laws of Namibia, in which the controlling interest is held by foreign national; or

(c) in relation to a close corporation, a close corporation incorporated under the laws of any country other than Namibia, or under the laws of Namibia, in which the controlling interest is held by foreign national; or
EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing provisions.

Words in bold type in square brackets indicate omissions from existing provisions.

BILL

To amend the Regional Councils Act, 1992, so as to provide for certain definitions; to provide further requirements for election as members of regional council; to restrict eligibility for election as members of the National Council; to subject the appointment of a person as chief regional officer to the approval of the Minister; to empower the Minister to determine methods of sale, letting, or hypothecation applied by regional councils in respect of immovable properties; to prohibit the sale and acquiring of immovable properties in settlement areas to and by foreign nationals; to provide the regional councils with certain powers in respect of the sale and lease of immovable properties in settlement areas similar to those of local authority councils; to increase certain penalties; and to provide for incidental matters.

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 22 of 1992 as amended by section 1 of Act No. 30 of 2000, section 1 of Act No. 12 of 2002 and section 1 of Act 16 of 2010

1. Section 1 of the Regional Councils Act, 1992, (in this Act referred to as the "principal Act"), is amended -

(a) by the insertion before the definition of "chairperson" of the following definitions:

"alienate", in relation to immovable property situated within a settlement area, means to enter into an agreement to sell, exchange, donate or otherwise dispose of, whether for any valuable consideration or otherwise, immovable property, and includes, in the case where such immovable property is registered in the name of -

(a) a company, the alienation of shares of the company to another person;

(b) a close corporation, the alienation of any member's interest in the close corporation or any portion of such interest to another person; or

(c) a body corporate, trust, association or any other legal entity, the alienation of interest of its members or beneficiaries or any portion of such interest to another person,

Amendment of section 32 of Act No. 22 of 1992, as amended by section 7 of Act 30 of 2000

7. Section 32 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) the savings bank as defined in section 1 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992);

(iv) the Agricultural Bank of Namibia Act, 2003 (Act No. 5 of 2003); or

(v) such other financial institution as may be approved by the Minister; or

(d) in such other circumstances as the Minister may prescribe."

Amendment of section 44 of Act No. 22 of 1992

8. Section 44 of the principal Act is amended by the substitution for the closing sentence after paragraph (b) of the following closing sentence:

"shall be guilty of an offence and liable on conviction to a fine not exceeding [RZ 000] [NS 000] or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment."

Amendment of section 44A of Act No. 22 of 1992, as amended by section 8 of Act 30 of 2000

9. Section 44A of the principal Act is amended by the substitution for subsection (3) of the following subsection:

"(3) A regulation made under subsection (1) may in respect of any contravention thereof or a failure to comply therewith, prescribe a penalty of a fine not exceeding [NS 000] or imprisonment for a period not exceeding six months, or to both such fine and such imprisonment."

Short title and commencement

10. This Act is called the Regional Councils Amendment Act, 2015.
REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

REGIONAL COUNCILS AMENDMENT BILL

(As read a First Time)

(Introduced by the Minister of Urban and Rural Development)

[B. 11 - 2015]