



Republic of Namibia  
Annotated Statutes

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## Close Corporations Act 26 of 1988

(OG 5658)

brought into force after Namibian independence  
on 1 March 1994 by Proc. 9/1994 (GG 820)

as amended by

**Close Corporations Amendment Act 8 of 1994** (GG 891)

deemed to have come into force on 1 March 1994, *except for* section 5, 14 and 30,  
which came into force on the date of publication: 25 July 1994 (section 31 of  
Act 8 of 1994; see annotations to individual sections of the Act)

**Married Persons Equality Act 1 of 1996** (GG 1316)

brought into force on 15 July 1996 by GN 154/1996 (GG 1340)

**Business and Intellectual Property Authority Act 8 of 2016** (GG 6105)

brought into force with effect from 16 January 2017 by GN 293/2016 (GG 6197)

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## ACT

To provide for the formation, registration, incorporation, management, control and liquidation of close corporations; and for matters connected therewith.

*(Afrikaans text signed by the Administrator-General on 27 December 1988)*

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BE IT ENACTED by the National Assembly, as follows:-

**[Act 8 of 1994 makes the following substitutions throughout the Act:**

- \* “Minister” for “Cabinet”
- \* “Gazette” for “Official Gazette”
- \* “Namibia” for “the territory”.

**These global substitutions are made by section 30 of Act 8 of 1994. Section 31 of Act 8 of 1994 provides that the principal Act is deemed to have come into force on 1 March 1994, except for section 5, 14 and 30, which came into force on the amending Act’s date of publication: 25 July 1994. It is possible that the reference to section 30 in respect of the commencement dates is in error. The intention may have been to refer to section 29 of Act 8 of 1994, which substitutes criminal penalties under the Act and thus should not have been made retroactive. Sections 5 and 14 of Act 8 of 1994 – which also come into force prospectively rather than retroactively – both deal with criminal offences.]**

### Definitions

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

“accounting records” in relation to a corporation, includes accounts, deeds, writings and such other documents as may be prescribed;

“association agreement” in relation to any corporation or the members thereof, means and association agreement which has been entered into in terms of section 44 by the members of the corporation, including any such agreement which has been altered or added to as contemplated in subsection (3) of section 49, or an agreement which has replaced it as contemplated in that subsection;

**[The phrase “means and association agreement...” should be “means an association agreement...”.]**

**[definition of “Cabinet” deleted by Act 8 of 1994]**

“BIPA” means the Business and Intellectual Property Authority established by section 3 of BIPA Act;

“BIPA Act” means the Business and Intellectual Property Authority Act, 2016 (Act No. 8 of 2016);

**[definitions of “BIPA” and “BIPA Act” inserted by Act 8 of 2016]**

“Companies Act” means the Companies Act, 1973 (Act 61 of 1973);

**[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]**

“company” means a company as defined in section 1(1) of the Companies Act;

“corporation” means a close corporation referred to in section 2(1) which has been registered under Part III of this Act;

“Court” means a court having jurisdiction in terms of section 7;

**[definition of “Court” substituted by Act 8 of 1994]**

“deregistration” in relation to a corporation, means the cancellation of the registration of the corporation’s founding statement; and “deregister” has a corresponding meaning;

“director” in relation to a company, means a director as defined in section 1(1) of the Companies Act;

**[definitions of “foreign country” and “foreign government” deleted by Act 8 of 1994]**

“founding statement” in relation to a corporation, means the founding statement of the corporation referred to in section 12 which has been registered in terms of section 13, and also any amended founding statement in respect of that corporation registered in terms of section 15(1) or (2);

“holding company” in relation to a company, means a holding company as defined in section 1(1) of the Companies Act;

“Master” means the Master of the High Court of Namibia;

**[definition of “Master” substituted by Act 8 of 1994]**

“member” in relation to a corporation, means a person qualified for membership of a corporation in terms of section 29 and designated as a member in a founding statement of the corporation, including, subject to the provisions of this Act, a trustee, administrator, executor or curator, or other legal representative, referred to in paragraph (c) of subsection (2) of section 29, in respect of any such person who is insolvent, deceased, mentally disordered or otherwise incapable or incompetent to manage his affairs, but excluding any such person who has in terms of this Act ceased to be a member;

“member’s interest” or “interest” in relation to a member of a corporation, means the interest of the member in the corporation expressed in accordance with section 12(e) as a percentage in the founding statement of the corporation;

“Minister” means the Minister of Trade and Industry, except in relation to any matter to be dealt with in the office of the Master in connection with the winding-up of a corporation, in which case it means the Minister of Justice;

[definition of “Minister” inserted by Act 8 of 1994]

“officer” in relation to -

- (a) a corporation, means any manager or secretary thereof, whether or not such manager or secretary is also a member of the corporation;
- (b) a company, means an officer as defined in section 1(1) of the Companies Act;

“prescribe” means prescribe by regulation; and “prescribed” has a corresponding meaning;

“Registrar” means the Registrar of business and industrial property as defined in section 1 of BIPA Act;

[definition of “Registrar” substituted by Act 8 of 2016]

“registration” in relation to -

- (a) any corporation, means the registration of the founding statement of the corporation referred to in section 12;
- (b) the founding statement or any amended founding statement of a corporation, means the registration thereof in terms of section 13 or section 15(1) or (2), as the case may be;
- (c) any matter in connection with a corporation, or any member thereof, particulars of which are specified in terms of this Act in a founding statement of the corporation, means the specifying of particulars thereof in any such statement; and
- (d) any other matter in connection with which any duty or power in relation to the registration thereof is in terms of this Act imposed on or granted to the Registrar, means the registration thereof by him in accordance with any applicable provision of this Act; and “registered” has a corresponding meaning;

“Registration Office” means the Registration Office as defined in section 1 of BIPA Act;

[definition of “Registration Office” substituted by Act 8 of 2016]

“regulation” means any regulation made under this Act;

“subsidiary” in relation to a company, means a subsidiary as defined in section 1(1) of the Companies Act;

[definition of “territory” deleted by Act 8 of 1994]

“this Act” includes the regulations.

## PART I

### FORMATION AND JURISTIC PERSONALITY OF CLOSE CORPORATIONS

### Formation and juristic personality of close corporations

2. (1) Any one or more persons, not exceeding ten, who qualify for membership of a close corporation in terms of this Act, may form a close corporation and secure its incorporation by complying with the requirements of this Act in respect of the registration of its founding statement referred to in section 12.

(2) A corporation formed in accordance with the provisions of this Act is on registration in terms of those provisions a juristic person and continues, subject to the provisions of this Act, to exist as a juristic person notwithstanding changes in its membership until it is in terms of this Act deregistered or dissolved.

(3) Subject to the provisions of this Act, the members of a corporation shall not merely by reason of their membership be liable for the liabilities or obligations of the corporation.

(4) A corporation shall have the capacity and powers of a natural person of full capacity in so far as a juristic person is capable of having such capacity or of exercising such powers.

## PART II

### ADMINISTRATION OF ACT

#### Registration Office and register

3. (1) For the purposes of this Act, the corporations are registered at the Registration Office.

[subsection (1) substituted by Act 8 of 2016]

(2) Registers of names and registration numbers and such other matters concerning corporations as may be prescribed, shall be kept in the Registration Office.

#### Registrar

4. The Registrar may in writing delegate any of the powers and entrust any of the duties assigned to him by this Act to any staff member of BIPA.

[section 4 amended by Act 8 of 1994 and substituted by Act 8 of 2016]

#### Inspection and copies of documents in Registration Office

5. (1) Any person may, on payment of the prescribed fee (including an additional fee if any document is not collected personally at the Registration Office) -

- (a) inspect any document kept under this Act by the Registrar in respect of any corporation; or
- (b) obtain a certificate from the Registrar as to the contents or part of the contents of any such document open to inspection; or
- (c) obtain a copy of or extract from any such document.

(2)

[subsection (2) deleted by Act 8 of 1994]

(3) If the Registrar is satisfied that any such inspection, certificate, copy or extract is required for purposes of research by or under the control of an institution for higher education, he may permit such inspection or furnish such certificate, copy or extract without payment of fees.

#### **Payment of fees**

6. (1) The payment of any fee, additional fee or other money payable to the Registrar in terms of this Act shall be effected in the prescribed manner or in other manner as the Registrar may direct.

[subsection (1) substituted by Act 8 of 2016]

(2) No document, form, return or notice in respect of which any fee is payable or any payment is required to be done in terms of this Act, shall be complete unless proof of payment of the required fee or other money has been lodged with the Registrar.

(3) For the purposes of subsection (1) the decision of the Registrar as to the manner in which in any particular case, or category of cases determined by him, any fee, additional fee or other money is in terms of this Act to be paid, shall be final.

(4) Any fee and other money payable in terms of this Act is for the account of BIPA and any outstanding fees or other money which is due and payable are debts due to BIPA and may be recoverable by the BIPA in any competent court.

[subsection (4) substituted by Act 8 of 2016]

#### **Courts having jurisdiction in respect of corporations**

7. (1) For the purposes of this Act the High Court of Namibia or, subject to subsection (2), any magistrate's court within whose area of jurisdiction the registered office or main place of business of a corporation is situate, shall have jurisdiction to entertain any matter in respect of a corporation.

(2) Notwithstanding the provisions of subsection (1) -

- (a) no magistrate's court shall entertain any matter with respect to the winding-up of a corporation;
- (b) a magistrate's court referred to in that subsection shall only have jurisdiction to deal with a matter if it is otherwise, in accordance with the provisions of the Magistrate's Courts Act, 1944 (Act 32 of 1944) relating to jurisdiction, within the competence of the magistrate's court to entertain such a matter.

[section 7 substituted by Act 8 of 1994]

#### **Security for costs in legal proceedings by corporations**

8. When a corporation in any legal proceedings is a plaintiff or applicant or brings a counterclaim or counter-application, the Court concerned may at any time during the proceedings if it appears that there is reason to believe that the corporation or, if it is being wound up, the liquidator thereof, will be unable to pay the costs of the defendant or respondent,



or the defendant or respondent in reconvention, if he is successful in his defence, require security to be given for those costs, and may stay all proceedings till the security is given.

### **Transmission of copies of Court orders to Registrar and Master**

9. When a Court makes any order in terms of this Act in relation to any corporation, the Registrar or clerk of the Court shall without delay by certified post transmit a copy of the order to the Registrar and, if such order relates to the winding-up of any corporation, a copy thereof to the Master as well.

### **Regulations**

10. (1) The Minister may make regulations -
- (a) providing for the conduct and administration of the Registration Office, and prescribing the practice and procedure to be observed therein;
  - (b) prescribing the practice and procedure to be observed in the office of the Master in connection with the winding-up of corporations;
  - (c) providing for the reproduction of any records relating to corporations in the Registration Office or the office of the Master by means of microfilm, microcard, miniature photographic process or any other process deemed suitable by the Minister;
  - (d) providing for the use for official purposes and the admissibility in evidence in any proceedings, whether in a court of law or otherwise, of any reproduction contemplated in paragraph (c);
  - (e) providing for the keeping and preservation of any records, or any reproductions thereof contemplated in paragraph (c), in the Registration Office or the office of the Master, the removal from such offices of such records or reproductions and the preservation thereof in any other place, and prescribing the circumstances under which such records or reproductions may be destroyed;
  - (f) prescribing how records required under this Act to be kept by a corporation may be kept, and prescribing the circumstances under which such records may be destroyed;
  - (g) prescribing the procedure to be followed with respect to any matter in connection with the winding-up of corporations;
  - (h) prescribing the form and the contents of any return, notice or document provided for by this Act;
  - (i) prescribing when an additional copy or copies of documents to be lodged under this Act shall require to be lodged, and whether such additional copy or copies shall be in the form of a copy or copies certified in a defined manner or shall be in duplicate original form;
  - (j) with the concurrence of the Minister, prescribing the matters in respect of which fees shall be payable, the persons by whom and to whom the fees shall be payable and the tariff of such fees;

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- (k) providing for a table of fees, subject to taxation by the Master, which shall be payable to a liquidator as remuneration;
- (l) prescribing a tariff of remuneration payable to any person performing on behalf of a liquidator any act relating to the winding-up of a corporation which the liquidator is not required to perform personally, and prohibiting the charging or recovery of remuneration at a higher tariff than the tariff so prescribed;
- (m) providing for the appointment by the Registrar in specified circumstances of an inspector to investigate the affairs of a corporation, for the powers of an inspector in conducting any such investigation, for the duty of any member, officer, employee or accounting officer of a corporation to make available books and documents in his custody or under his control and to afford such assistance as an inspector may require in connection with any such investigation; for reporting by an inspector to the Registrar; for the making available by the Registrar of any such report to other persons; for the admissibility of any such report as evidence in legal proceedings; and for defraying the expenses of, and in connection with, any such investigation;

[The word “circumstances” is misspelt in the *Official Gazette*, as reproduced above.]

- (n) as to any other matter required or permitted by this Act to be prescribed; and
- (o) generally, as to any matter which it considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

[The word “expedient” is misspelt in the *Official Gazette*, as reproduced above.]

(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of N\$2 000 or imprisonment for a period of six months or both such fine and such imprisonment.

[subsection (2) amended by Act 8 of 1994, with effect from 25 July 1994]

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## 11.

[section 11 deleted by Act 8 of 2016]

## PART III

### REGISTRATION, DEREGISTRATION AND CONVERSION

#### Founding statement

12. (1) Any person qualified for membership in terms of section 29 or, subject to section 28, any number of such persons who intend to form a corporation, shall draw up a founding statement in the prescribed form in the official language of Namibia, which shall, subject to the provisions of this Act, contain the following particulars:

[introductory phrase amended by Act 8 of 1994]

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- (a) The full name of the corporation: Provided that a literal translation of that name into any language other than the official language of Namibia, or a shortened form of that name or such translation thereof, may in addition be given;

**[paragraph (a) amended by Act 8 of 1994]**

- (b) the principal business to be carried on by the corporation;
- (c)
  - (i) a postal address for the corporation; and
  - (ii) the address (not being the number of a post office box) of the office of the corporation referred to in section 25(1);
- (d) the full name, residential address and identity number of each member or, if he or she has no such number, the date of his or her birth;

**[paragraph (d) substituted by Act 8 of 1994]**

- (e) the size, expressed as a percentage, of each member's interest in the corporation;
- (f) particulars of the contribution of each member to the corporation in accordance with section 24(1), including -
  - (i) any amounts of money; and
  - (ii) a description, and statement of the fair value, of any property (whether corporeal or incorporeal) or any service referred to in section 24(1);
- (g)
  - (i) the name and postal address of the person appointed as its accounting officer; and

**[subparagraph (i) substituted by Act 8 of 1994]**

- (ii) the date of the end of the financial year of the corporation.

(2) The founding statement of a corporation shall be signed by every person who is to become a member of the corporation upon its registration and each such person shall sign the founding statement in the presence of at least one witness who shall attest the signature and state his or her residential, business and postal address.

**[subsection (2) inserted by Act 8 of 1994]**

**Registration of founding statement**

**13.** (1) If a founding statement referred to in section 12 complying with the requirements of this Act is lodged with the Registrar in triplicate in the manner prescribed, and if the business to be carried on by the corporation is lawful, and provided the name of the corporation has been approved, the Registrar shall upon payment of the prescribed fee register such statement in his registers and shall give notice of the registration in the *Gazette*.

- (2) Every corporation shall, for the benefit of the State Revenue Fund -
  - (a) annually, within the period after the commencement of its financial year and in the manner as prescribed, pay the prescribed annual duty;

- (b) in the event of late payment of the annual duty, pay, in addition to such duty, such penalty as may be prescribed.

[subsection (2) inserted by Act 8 of 1994]

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### 13A.

[Section 13A, which was present and numbered as section 13A in the original statute, is deleted by Act 8 of 1994.]

### Certificate of incorporation

14. (1) Upon the registration of a founding statement the Registrar shall assign a registration number to the corporation concerned and endorse under his hand on the statement a certificate that the corporation is incorporated.

(2) A certificate of incorporation given by the Registrar in terms of subsection (1) or section 27(4)(c), or a copy thereof, as the case may be, shall upon its mere production, in the absence of proof of fraud or error, be conclusive evidence that all the requirements of this Act in respect of registration of the corporation concerned and of matters precedent and incidental thereto have been complied with, and that the corporation concerned is duly incorporated under this Act.

[The word "incorporated" is misspelt in the *Official Gazette*, as reproduced above.]

### Registration of amended founding statement

15. (1) If any change is made or occurs in respect of any matter of which particulars are stated in a founding statement of a corporation in accordance with paragraph (b), (d) (other than in relation to a member's residential address), (e) or (f) of section 12, the corporation shall, subject to section 29(3)(c) and (d), within 28 days after such change -

- (a) lodge with the Registrar for registration in his or her registers an amended founding statement in triplicate, in the prescribed form, signed by every member of the corporation and by any person who will become a member on such registration, and which contains particulars and the date of the change; and

- (b) pay the fee prescribed for the registration of an amended founding statement.

- (2) (a) If any change is made or occurs in respect of any matter of which particulars are stated in a founding statement in accordance with paragraph (a) or (g)(ii) of section 12, an amended founding statement shall, in accordance with the requirements of subsection (1), be lodged with the Registrar for registration.

- (b) If any change is made or occurs in respect of a member's residential address or any matter of which particulars are stated in a founding statement -

- (i) in accordance with paragraph (c) of section 12, and the corporation has approved of such change and the accounting officer so certifies in writing; or

- (ii) in accordance with paragraph (g)(i) of section 12,

the corporation shall lodge with the Registrar for registration in his or her registers a statement in the prescribed form, which may be signed by the accounting officer

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on behalf of the members, and which, upon registration thereof, shall form part of the founding statement or amended founding statement.

(3) Any change contemplated in -

(a) paragraph (a) or (b)(i) of subsection (2) shall take effect upon registration of the statement in question in the relevant registers, or upon a later date mentioned in such statement;

(b) paragraph (b)(ii) of subsection (2) shall take effect upon the date mentioned in the statement in question.

(4) If, by an order of court in terms of section 49, an alteration or addition is made to a founding statement, the provisions of subsection (1) in relation to the lodging of an amended founding statement, shall *mutatis mutandis* apply in respect of such founding statement.

(5) (a) If a corporation fails to lodge an amended founding statement in accordance with the provisions of subsection (1), (2) or (4), as the case may be, the Registrar may on his or her own initiative or on application by any member or creditor of the corporation serve on the members of the corporation, in accordance with section 25(2)(a), a reminder to make good the default within 28 days of the date of the reminder.

(b) If the members concerned fail to comply with any such reminder, the Registrar may, by written notice so served, direct those members so served, to make good the default within 28 days of the date of the notice.

(c) If the members concerned fail to comply with any such direction, the Registrar may by further written notice, so served on the members by registered post, impose on the members, or any of them, a penalty not exceeding N\$10 per day from the date upon which the reminder referred to in paragraph (a) was sent.

(d) When the Registrar has served a notice referred to in paragraph (c) on the members, he or she may, after expiry of a period of 21 days from the date of that notice, forward a certified copy thereof to the clerk of the magistrate's court in whose area of jurisdiction the registered office of the corporation is situate, who shall record it, and thereupon such notice shall have the effect of a civil judgment of that magistrate's court against every such member for the amount of the penalty in question.

(e) On application by one or more of the members concerned, the court in question may reduce or rescind the penalty, or exempt any such member or members from the effect of the notice.

(6) An amended founding statement referred to in subsection (1)(a), (2)(a) or (4) and a statement referred to in subsection (2)(b) shall be signed in the presence of at least one witness who shall attest the signature and state his or her residential, business and postal address.

[section 15 substituted by Act 8 of 1994]

**Keeping of copies of founding statements by corporations**

16. (1) A corporation shall keep a copy of its founding statement and any proof of its registration at the registered office of the corporation.

(2) A document referred to in subsection (1) shall during the business hours of the corporation be open to inspection by any person upon payment to the corporation, in the case of a person who is not a member of the corporation, of one rand or such lesser amount as the corporation may determine.

(3) A member or officer of a corporation who refuses access for the purposes of an inspection in terms of subsection (2) to a person entitled thereto, shall be guilty of an offence.

#### **No constructive notice of particulars in founding statement and other documents**

17. No person shall be deemed to have knowledge of any particulars merely because such particulars are stated, or referred to, in any founding statement or other document regarding a corporation registered by the Registrar or lodged with him, or which is kept at the registered office of a corporation in accordance with the provisions of this Act.

#### **Meaning of “name” in sections 19, 20 and 21**

18. For the purpose of sections 19, 20 and 21 “name”, in relation to a corporation, unless the context otherwise indicates, means the full name of that corporation, or a literal translation of that name into any language other than the official language in Namibia, or a shortened form of that name or any such translation thereof, referred to in section 12(a).

[section 18 amended by Act 8 of 1994;  
not all changes indicated by amendment markings]

#### **Undesirable names**

19. (1) No founding statement of a corporation referred to in section 12 or an amended founding statement which relates to a change of name referred to in section 15(2), shall be registered if the name or changed name of the corporation, as the case may be, is in the opinion of the Registrar undesirable.

(2) The Registrar may, on written application on the prescribed form and on payment of the prescribed fee, reserve a name (approved by him or her) or literal translation into any language other than official language in Namibia, of a name of a corporation or a shortened form of the name or name so translated of a corporation, for a period of 60 days pending the registration of a founding statement: Provided that when, at the conversion of a company into a corporation in terms of section 27, the name of the company is retained, no reservation of such name shall be necessary.

[subsection (2) substituted by Act 8 of 1994]

#### **Order to change name**

20. (1) If within a period of one year after the registration of a founding statement or an amended founding statement of a corporation it appears to the Registrar that a name mentioned in the founding statement or amended founding statement is undesirable, he shall order the corporation concerned to change such name.

(2) Any interested person may -

(a) within a period of one year referred to in subsection (1), on payment of the prescribed fee apply in writing to the Registrar for an order directing the corporation to change its name on the ground of undesirability or that such name is calculated to cause damage to the applicant; or

- (b) within a period of two years after the registration of a founding statement apply to a Court for an order directing the corporation to change its name on the ground of undesirability or that such name is calculated to cause damage to the applicant, and the Court may on such application make such order as it deems fit.

[Subsection (2) is amended by Act 8 of 1994. A misspelling in the original Act is corrected without being indicated by amendment markings.]

(3) The Registrar may, after application has been made in terms of paragraph (a) of subsection (2), in writing order the corporation concerned to change its name if, in the opinion of the Registrar, it is or has become undesirable.

(4) A corporation which fails within any period mentioned in an order under subsection (1) or (3) to comply with any such order, shall be guilty of an offence.

(5) No provision of this Act shall be construed as affecting the rights of any person at common law to bring an action against any corporation for passing off any business goods or services as those of another person.

(6) Any person feeling aggrieved by any decision or order of the Registrar under this section may, within one month after the date of such decision or order, apply to the High Court of Namibia for relief, and the Court may consider the merits of any such matter, receive further evidence and make any order it deems fit.

[subsection (6) inserted by Act 8 of 1994]

(7) No prescribed fee mentioned in section 15(1) shall be payable in respect of the registration of an amended founding statement by virtue of an order under subsection (3) of this section.

[subsection (7) inserted by Act 8 of 1994]

### Effect of change of name

21. (1) A change in terms of this Act of a name of a corporation shall not effect any right or obligation of the corporation or any legal proceedings instituted by or against the corporation, and any legal proceedings that could have been continued or commenced by or against the corporation prior to the change of name may, notwithstanding such change of name, after the change be continued or commenced by or against the corporation, as the case may be.

(2) Upon the production by a corporation of a certified copy of a founding statement reflecting a change of name of that corporation to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with all the requirements pursuant to any such law as to the form of application (if any) and the payment of any required fee, such registrar or other officer shall make in his register all such alterations as are necessary by reason of the change of name in respect of the corporation.

### Formal requirements as to names and registration numbers

22. (1) The abbreviation “CC”, in capital letters, shall be subjoined to the name used by a corporation.

[subsection (1) substituted by Act 8 of 1994]

(2) A corporation shall refer to the registration number of the corporation on all prescribed documents and correspondence sent by the corporation to the Registration Office.

(3) If a corporation is being wound up, the statement “In Liquidation” shall for the duration of such winding-up be subjoined to the name of the corporation which it uses.

### **Improper references to incorporation in terms of Act**

**22A.** Any person carrying on a business under a name or title -

- (a) to which the abbreviation “CC” is subjoined; or
- (b) of which the words “close corporation” or any abbreviation thereof form part,

in any way which indicates incorporation as a close corporation in terms of this Act, while not being so incorporated, shall be guilty of an offence.

[section 22A inserted by Act 8 of 1994 with effect from 25 July 1994]

### **Use and publication of names**

**23.** (1) Every corporation -

- (a) shall display its registered full name (or a registered literal translation thereof) and registration number in a conspicuous position and in characters easily legible on the outside of its registered office and every office or place in which its business is carried on;

[paragraph (a) amended by Act 8 of 1994]

- (b) shall have that name (or such translation thereof) and registration number mentioned in legible characters in all notices and other official publications of the corporation, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money, goods or services purporting to be signed by or on behalf of the corporation, and all letters, delivery notes, invoices, receipts and letters of credit of the corporation; and

[paragraph (b) amended by Act 8 of 1994; changes of punctuation not indicated by amendment markings]

- (c) shall use a registered shortened form of that name only in conjunction with that name or such literal translation thereof.

(2) If any member of, or any other person on behalf of, a corporation -

- (a) issues or authorizes the issue of any such notice or official publication of the corporation, or signs or authorizes to be signed on behalf of the corporation any such bill of exchange, promissory note, endorsement, cheque or order for money, goods or services; or
- (b) issues or authorizes the issue of any such letter, advertisement, delivery note, invoice, receipt or letter of credit of the corporation,

without the name of the corporation, or such registered literal translation thereof, and its registration number being mentioned therein in accordance with subsection (1)(b), he shall be guilty of an offence, and shall further be liable to the holder of the bill of exchange, promissory



note, cheque or order for money, goods or services for the amount thereof, unless the amount is duly paid by the corporation .

(3) Any corporation which fails to comply with any provision of subsection (1) shall be guilty of an offence.

### **Contributions by members**

**24.** (1) Every person who is to become a member of a corporation upon its registration, shall make to the corporation an initial contribution of money, of property (whether corporeal or incorporeal), or of services rendered in connection with and for the purposes of the formation and incorporation of the corporation, and particulars of such contribution shall be stated in the founding statement of the corporation referred to in section 12, as required by paragraph (f) of that section.

(2) The amount or value of the members' contributions, or of the contribution of any one or more members, may from time to time by agreement among all the members -

- (a) be increased by additional contributions of money or property (whether corporeal or incorporeal) to the corporation by existing members or, in terms of section 33(1)(b), by a person becoming a member of a registered corporation; or
- (b) be reduced, provided that a reduction by way of a repayment to any member shall comply with the provisions of section 51(1).

(3) Particulars of any increase or reduction of a member's contribution in terms of subsection (2) shall be furnished in an amended founding statement referred to in section 15(1).

(4) Money or property referred to in subsection (1) or (2)(a) shall, in order to vest ownership thereof in the corporation, be paid, delivered or transferred, as the case may be, to the corporation within a period of ninety days -

- (a) after the date of registration of the corporation in the case of an initial contribution referred to in subsection (1); or
- (b) after the date of the registration of an amended founding statement in connection with any additional contribution referred to in subsection (2)(a).

(5) An undertaking by a member to make an initial or an additional contribution to a corporation shall be enforceable by the corporation in legal proceedings.

### **Postal address and registered office**

**25.** (1) Every corporation shall have in Namibia a postal address and an office to which, subject to subsection (2), all communications and notices to the corporation may be addressed.

(2) Any -

- (a) notice, order, communication or other document which is in terms of this Act required or permitted to be served upon any corporation or member thereof, shall be deemed to have been served if it has been delivered at the registered office, or has been sent by certified or registered post to the registered office or postal address, of the corporation; and

- (b) process which is required to be served upon any corporation or member thereof shall, subject to applicable provisions in respect of such service in any law, be served by so delivering or sending it.

### **Deregistration**

26. (1) If the Registrar has reasonable cause to believe that a corporation is not carrying on business or is not in operation, he shall serve on the corporation at its postal address a letter by certified post in which the corporation is notified thereof and informed that if he is not within sixty days from the date of his letter informed in writing that the corporation is carrying on business or is in operation, the corporation will, unless good cause is shown to the contrary, be deregistered.

(2) After the expiration of the period of sixty days mentioned in a letter referred to in subsection (1), or upon receipt from the corporation of a written statement signed by or on behalf of every member to the effect that the corporation has ceased to carry on business and has no assets or liabilities, the Registrar may, unless good cause to the contrary has been shown by the corporation, deregister that corporation.

(3) Where a corporation has been deregistered, the Registrar shall give notice to that effect in the *Gazette*, and the date of the publication of such notice shall be deemed to be the date of deregistration.

(4) The deregistration of a corporation shall not affect any liability of a member of the corporation to the corporation or to any other person, and such liability may be enforced as if the corporation were not deregistered.

(5) If a corporation is deregistered while having outstanding liabilities, the persons who are members of such corporation at the time of deregistration shall be jointly and severally liable for such liabilities.

(6) The Registrar may on application by any interested person, if he is satisfied that a corporation was at time of its deregistration carrying on business or was in operation, or that it is otherwise just that the registration of the corporation be restored, and has complied with the provisions of section 19(2), restore the said registration.

(7) The Registrar shall give notice of the restoration of the registration of a corporation in the *Gazette*, and as from the date of such notice the corporation shall continue to exist and be deemed to have continued in existence as from the date of deregistration as if it were not deregistered.

### **Conversion of companies into corporations**

27. (1) Any company having ten or fewer members all of whom qualify for membership of a corporation in terms of section 29 of this Act, may be converted into a corporation, provided that every member of the company becomes a member of the corporation.

(2) In respect of a conversion referred to subsection (1), there shall be lodged with the Registrar -

- (a) an application for conversion, in the prescribed form, signed by all the members of the company, containing a statement that upon conversion the assets of the corporation, fairly valued, will exceed its liabilities, and that after conversion the corporation will be able to pay its debts as they become due in the ordinary course of its business;

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- (b) a statement in writing by the auditor of the company that he has no reason to believe that a material irregularity contemplated in subsection (3) of section 26 of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), has taken place or is taking place in relation to the company or, where steps have been taken in terms of that subsection, that such steps and other proceedings in terms of the subsection have been completed; and
  - (c) a founding statement referred to in section 12 lodged in accordance with section 13, subject to the proviso to section 19(2).
- (3) For the purposes of the founding statement referred to in subsection (2)(c) -
- (a) there shall, in regard to the requirements of section 12(f), be a statement of the aggregate of the contributions of the members, which shall be for an amount not greater than the excess of the fair value of the assets to be acquired by the corporation over the liabilities to be assumed by the corporation by reason of the conversion: Provided that the corporation may treat any portion of such excess not reflected as members' contributions, as amounts which may be distributed to its members;
  - (b) the members' interests stated in terms of section 12(e) need not necessarily be in proportion to the number of shares in the company held by the respective members at the time of the conversion.
- (4) If the provisions of subsection (2) have been complied with, the Registrar shall, if he or she is satisfied that the company concerned has complied materially with the requirements of the Companies Act -

**[introductory phrase amended by Act 8 of 1994]**

- (a) register the founding statement in accordance with the provisions of section 13;
  - (b) satisfy himself that, simultaneously with such registration, the registration of the memorandum and the articles of association of the company concerned is cancelled in accordance with the provisions of the Companies Act;
  - (c) endorse on the founding statement a certificate of incorporation as provided by section 14(1): Provided that such certificate shall state the fact that the corporation has been converted from a company and shall mention the name and registration number of the former company; and
  - (d) give notice in the *Gazette* of conversion.
- (5) (a) On the registration of a corporation converted from a company, the assets, rights, liabilities and obligations of the company shall vest in the corporation.
- (b) Any legal proceedings instituted by or against the company before the registration may be continued by or against the corporation, and any other thing done by or in respect of the company shall be deemed to have been done by or in respect of the corporation.
  - (c) The conversion of a company into a corporation shall in particular not affect -

- (i) any liability of a director or officer of the company to the company on the ground of breach of trust or negligence, or to any other person pursuant to any provision of the Companies Act; or
  - (ii) any liability of the company, or of any other person, as surety.
- (d) The juristic person which prior to the conversion of a company into a corporation existed as a company, shall notwithstanding the conversion continue to exist as a juristic person but in the form of a corporation.

[paragraph (d) inserted by Act 8 of 1994]

(6) The corporation shall forthwith after its conversion from a company, give notice in writing of the conversion to all creditors of the company at the time of conversion, and to all other parties to contracts or legal proceedings in which the company was involved at the time of the conversion.

(7) Upon the production by a corporation which has been converted from a company of a certified copy of its founding statement referred to in subsection (4)(a), to any registrar or other officer charged with the maintenance of a register under any law, and on compliance with all the requirements pursuant to any such law as to the form of application (if any) and the payment of any required fee, such registrar or officer shall make in his register all such alterations as are necessary by reason of the conversion of the company into a corporation: Provided that no transfer or stamp duties shall be payable in respect of such alterations in registers.

(8) If the accounting officer mentioned in the founding statement of a converted corporation is not the person who or firm which has acted as auditor for the company, the appointment of that person or firm shall lapse upon the conversion into a corporation.

(9) If a corporation is converted into a company in accordance with the provisions of the Companies Act, the registration of the founding statement of the corporation shall be cancelled simultaneously with the registration of the memorandum and articles of association of the company in terms of that Act.

## PART IV

### MEMBERSHIP

#### Number of members

28. A corporation may at its incorporation have one or more members, but at no time shall the number of members exceed ten.

#### Requirements for membership

29. (1) Subject to the provisions of subsection (2)(b) and (c), only natural persons may be members of a corporation and no juristic person or trustee of a trust *inter vivos* in that capacity shall directly or indirectly (whether through the instrumentality of a nominee or otherwise) hold a member's interest in a corporation.

[subsection (1) amended by Act 8 of 1994]

- (2) The following persons shall qualify for membership of a corporation:

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- (a) Any natural person entitled to a member's interest;
  - (b) a natural or juristic person, *nomine officii*, who is a trustee of a testamentary trust entitled to a member's interest, provided that -
    - (i) no juristic person is a beneficiary of such trust; and
    - (ii) if the trustee is a juristic person, such juristic person is not directly or indirectly controlled by any beneficiary of the trust; and
  - (c) a natural or juristic person, *nomine officii*, who, in the case of a member who is insolvent, deceased, mentally disordered or otherwise incapable or incompetent to manage his affairs, is a trustee of his insolvent estate or an administrator, executor or curator in respect of such member or is otherwise a person who is his duly appointed or authorized legal representative.
- (3)
- (a) The membership of any person qualified therefor in terms of subsection (2) shall commence on the date of the registration of a founding statement of a corporation containing the particulars required by section 12 in regard to such person and his member's interest.
  - (b) Where any person is to become a member of a registered corporation the existing member or members of the corporation shall ensure that the requirements of section 15(1) regarding the lodging of an amended founding statement with the Registrar are complied with.
  - (c) A trustee of an insolvent estate, administrator, executor or curator, or other legal representative, referred to in subsection (2)(c), in respect of any member of a corporation, who is not obliged or who does not intend to transfer the interest of the member in the corporation in accordance with the provisions of this Act within twenty-eight days of his assuming office to any other person, shall within that period or any extended period allowed by the Registrar on application by him, request the existing member or members of the corporation to lodge with the Registrar in accordance with section 15(1) an amended founding statement designating him, *nomine officii*, as representative of the member of the corporation in question.
  - (d) Where the corporation has no other member, any such representative himself shall, in the circumstances contemplated in paragraph (c), act on behalf of the corporation in accordance with the provisions of section 15(1), read with the said paragraph (c).
  - (e) The provisions of paragraphs (c) and (d) shall not affect the power of such representative, as from the date of his assuming office, and whether or not any such amended founding statement has been lodged, to represent the member concerned in all matters in which he himself as a member could have acted, until the interest of that member in the corporation has in accordance with the provisions of this Act been transferred to any other qualified person.
- (4) A corporation is not concerned with the execution of any trust in respect of any member's interest in the corporation.

**Nature of member's interest**

**30.** (1) The interest of any member in a corporation shall be a single interest expressed as a percentage.

(2) Two or more persons shall not be joint holders of the same member's interest in a corporation.

#### **Certificate of member's interest**

**31.** Each member of a corporation shall be issued with a certificate, signed by or on behalf of every member of that corporation, and stating the current percentage of such member's interest in the corporation.

#### **Representation of members**

**32.** (1) A minor who is a member of a corporation, other than a minor whose guardian has lodged a written consent referred to in section 47(1)(a)(ii), shall be represented in the corporation by his guardian.

(2)

[subsection (2) deleted by Act 1 of 1996]

(3) A member subject to any other legal disability shall be represented in the corporation by his duly appointed or authorized legal representative referred to in paragraph (c) of subsection (2) of section 29.

#### **Acquisition of member's interest by new member**

**33.** (1) A person becoming a member of a registered corporation shall acquire his member's interest required for membership -

- (a) from one or more of the existing members or his or their deceased or insolvent estates; or
- (b) pursuant to a contribution made by such person to the corporation, in which case the percentage of his member's interest is determined by agreement between him and the existing members, and the percentages of the interest of the existing members in the corporation shall be reduced in accordance with the provisions of section 38(b).

(2) The contribution referred to in subsection (1)(b) may consist of an amount of money, or of any property (whether corporeal or incorporeal) of a value agreed upon by the person concerned and the existing members.

#### **Disposal of interest of insolvent member**

**34.** (1) Notwithstanding any provision to the contrary in any association agreement or other agreement between members, a trustee of the insolvent estate of a member of a corporation may, in the discharge of his duties, sell that member's interest -

- (a) to the corporation, if there are one or more members other than the insolvent member;
- (b) to the members of the corporation other than the insolvent member, in proportion to their member's interests or as they may otherwise agree upon; or

- (c) subject to the provisions of subsection (2), to any other person who qualifies for membership of a corporation in terms of section 29.

(2) If the corporation concerned has one or more members other than the insolvent, the following provisions shall apply to a sale in terms of subsection (1)(c) of the insolvent member's interest:

- (a) The trustee shall deliver to the corporation a written statement giving particulars of the name and address of the proposed purchaser, the purchase price and the time and manner of payment thereof;
- (b) for a period of twenty-eight days after the receipt by the corporation of the written statement the corporation or the members, in such proportions as they may agree upon, shall have the right, exercisable by written notice to the trustee, to be substituted as purchasers of the whole, and not a part only, of the insolvent member's interest at the price and on the terms set out in the trustee's written statement; and
- (c) if the insolvent member's interest is not purchased in terms of paragraph (b), the sale referred to in the trustee's written statement shall become effective and be implemented.

#### **Disposal or interest of deceased member**

**35.** Subject to any other arrangement in an association agreement, an executor of the estate of a member of a corporation who is deceased shall, in the performance of his duties -

- (a) cause the deceased member's interest in the corporation to be transferred to a person who qualifies for membership of a corporation in terms of section 29 and is entitled thereto as legatee or heir or under a redistribution agreement, if the remaining member or members of the corporation (if any) consent to the transfer of the member's interest to such person; or
- (b) if any consent referred to in paragraph (a) is not given within twenty-eight days after it was requested by the executor, sell the deceased member's interest -
  - (i) to the corporation, if there is any other member or members than the deceased member;
  - (ii) to any other remaining member or members of the corporation in proportion to the interests of those members in the corporation or as they may otherwise agree upon; or
  - (iii) to any other person who qualifies for membership of a corporation in terms of section 29, in which case the provisions of subsection (2) of section 34 shall *mutatis mutandis* apply in respect of any such sale.

#### **Cessation of membership by order of Court**

**36.** (1) On application by any member of a corporation a Court may on any of the following grounds order that any member shall cease to be a member of the corporation:

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- (a) Subject to the provisions of the association agreement (if any), that the member is permanently incapable, because of unsound mind or any other reason, of performing his part in the carrying on of the business of the corporation;
- (b) that the member has been guilty of such conduct as taking into account the nature of the corporation's business, is likely to have a prejudicial effect on the carrying on of the business;
- (c) that the member so conducts himself in matters relating to the corporation's business that it is not reasonably practicable for the other member or members to carry on the business of the corporation with him; or
- (d) that circumstances have arisen which render it just and equitable that such member should cease to be a member of the corporation:

Provided that such application to a Court on any ground mentioned in paragraph (a) or (d) may also be made by a member in respect of whom the order shall apply.

(2) A Court granting an order in terms of subsection (1) may make such further orders as it deems fit in regard to -

- (a) the acquisition of the member's interest concerned by the corporation or by members other than the member concerned; or
- (b) the amounts (if any) to be paid in respect of the member's interest concerned or the claims against the corporation of that member, the manner and times of such payments and the persons to whom they shall be made; or
- (c) any other matter regarding the cessation of membership which the Court deems fit.

**Other dispositions of members' interests**

**37.** Subject to sections 34, 35 and 36, no member of a corporation shall dispose of his or her interest in the corporation or a portion of such interest, unless such interest or portion is disposed of -

- (a) in accordance with an association agreement or the provisions of section 46(g); or
- (b) with the consent of every other member of the corporation:

Provided that no member shall dispose of his or her interest to the corporation unless it has one or more other members.

[section 37 substituted by Act 8 of 1994]

**Maintenance of aggregate of members' interests**

**38.** The aggregate of the members' interests in a corporation expressed as a percentage shall at all times be one hundred per cent, and for that purpose -

- (a) any transfer of the whole, or a portion, of a member's interest shall be effected by the cancellation or the reduction, as the case may be, of the interest of the member concerned and the allocation in the name of the transferee, if not already a member, of a member's interest of the percentage concerned, or the addition to the interest of an existing member of the percentage concerned;



- (b) when a person becomes a member of a registered corporation pursuant to a contribution made by him to the corporation, the percentage of his member's interest shall be agreed upon by him and the existing members, and the percentages of the interests of the existing members shall be reduced proportionally or as they may otherwise agree; and
- (c) any member's interest acquired by the corporation shall be added to the respective interests of the other members in proportion to their existing interests or as they may otherwise agree.

#### **Payment by corporation for members' interests acquired**

**39.** (1) Payment by a corporation in respect of its acquisition of a member's interest in the corporation shall be made only -

- (a) with the previously obtained written consent of every member of the corporation, other than the member whose interest is acquired, for the specific payment;
- (b) if, after such payment is made, the corporation's assets, fairly valued, exceed all its liabilities;
- (c) if the corporation is able to pay its debts as they become due in the ordinary course of its business; and
- (d) if such payment will in the particular circumstances not in fact render the corporation unable to pay its debts as they become due in the ordinary course of its business.

(2) For the purposes of subsection (1) "payment" shall include the delivery or transfer of any property.

#### **Financial assistance by corporation in respect of acquisition of members' interests**

**40.** A corporation may give financial assistance (whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise) for the purpose of, or in connection with, any acquisition of a member's interest in that corporation by any person, only -

- (a) with the previously obtained written consent of every member of the corporation for the specific assistance;

[The word "assistance" is misspelt in the *Official Gazette*, as reproduced above.]

- (b) if, after such assistance is given, the corporation's assets, fairly valued, exceed all its liabilities;
- (c) if the corporation is able to pay its debts as they become due in the ordinary course of its business; and
- (d) if such assistance will in the particular circumstances not in fact render the corporation unable to pay its debts as they become due in the ordinary course of its business.

[The word "assistance" is misspelt in the *Official Gazette*, as reproduced above.]

### Publication of names of members

41. (1) A corporation shall not sent to any person any business letter bearing a registered name of the corporation, unless the forenames (or the initials thereof) and surname of every member thereof is stated thereon.

[The word “sent” should be “send” to be grammatically correct.]

(2) Any corporation which contravenes any provision of subsection (1) shall be guilty of an offence.

## PART V

### INTERNAL RELATIONS

#### Fiduciary position of members

42. (1) Each member of a corporation shall stand in a fiduciary relationship to the corporation.

(2) Without prejudice to the generality of the expression “fiduciary relationship”, the provisions of subsection (1) imply that a member -

- (a) shall in relation to the corporation act honestly and in good faith, and in particular -
  - (i) shall exercise such powers as he may have to manage or represent the corporation in the interest and for the benefit of the corporation; and
  - (ii) shall not act without or exceed the powers aforesaid; and
- (b) shall avoid any material conflict between his own interests and those of the corporation, and in particular -
  - (i) shall not derive any personal economic benefit to which he is not entitled by reason of his membership of or service to the corporation, from the corporation or from any other person in circumstances where that benefit is obtained in conflict with the interests of the corporation;
  - (ii) shall notify every other member, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he may have in any contract of the corporation; and
  - (iii) shall not compete in any way with the corporation in its business activities.
- (3) (a) A member of a corporation whose act or omission has breached any duty arising from his fiduciary relationship shall be liable to the corporation for -
  - (i) any loss suffered as a result thereof by the corporation; or
  - (ii) any economic benefit derived by the member by reason thereof.
- (b) Where a member fails to comply with the provisions of subparagraph (ii) of paragraph (b) of subsection (2) and it becomes known to the corporation that the

member has an interest referred to in that subparagraph in any contract of the corporation, the contract in question shall, at the option of the corporation, be voidable: Provided that where the corporation chooses not to be bound a Court may on application by any interested person, if the Court is of the opinion that in the circumstances it is fair to order that such contract shall nevertheless be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.

(4) Except as regards his duty referred to in subsection 2(a)(i), any particular conduct of a member shall not constitute a breach of a duty arising from his fiduciary relationship to the corporation, if such conduct was preceded or followed by the written approval of all the members where such members were or are cognisant of all the material facts.

### **Liability of members for negligence**

**43.** (1) A member of a corporation shall be liable to the corporation for loss caused by his failure in the carrying on of the business of the corporation to act with the degree of care and skill that may reasonably be expected from a person of his knowledge and experience.

(2) Liability referred to in subsection (1) shall not be incurred if the relevant conduct was preceded or followed by the written approval of all the members where such members were or are cognisant of all the material facts.

### **Association agreements**

**44.** (1) The members of a corporation having two or more members may at any time enter into a written association agreement signed by or on behalf of each member, which regulates -

- (a) any matter which in terms of this Act may be set out or agreed upon in an association agreement; and
- (b) any other matter relating to the internal relationship between the members, or the members and the corporation, in a manner not inconsistent with the provisions of this Act.

(2) A corporation shall keep any association agreement at the registered office of the corporation where any member may inspect it and may make extracts therefrom or copies thereof.

(3) Whether or not an association agreement exists, any other agreement, express or implied, between all the members of a corporation on any matter that may be regulated by an association agreement shall be valid, provided that such express or implied agreement -

- (a) is not inconsistent with any provision of an association agreement;
  - (b) does not affect any person other than the corporation or a member who is a party to it; and
  - (c) ceases to have any effect when any party to it ceases to be a member of the corporation.
- (4) Subject to the provisions of this Act, an association agreement or an agreement referred to in subsection (3) shall bind the corporation to every member in his

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capacity as a member of that corporation and, in such capacity, every member to the corporation and to every other member.

- (5) A new member of a corporation shall be bound by an existing association agreement between the other members as if he has signed it as a party thereto.
- (6) Any amendment to, or the dissolution of, an association agreement shall be in writing and signed by or on behalf of each member, including a new member referred to in subsection (5).

**No access to or constructive notice of association agreement**

**45.** No person who is not a member of a corporation shall, except by virtue of a provision of this Act, be entitled to inspect any association agreement in respect of that corporation, and no person dealing with the corporation shall be deemed to have knowledge of any particular thereof merely because it is stated or referred to therein, whether or not the agreement is in accordance with section 44(2) kept at the registered office of the corporation.

**Variable rules regarding internal relations**

**46.** The following rules in respect of internal relations in a corporation shall apply in so far as this Act or an association agreement in respect of the corporation does not provide otherwise:

- (a) Every member shall be entitled to participate in the carrying on of the business of the corporation;
- (b) subject to the provisions of section 47, members shall have equal rights in regard to the management of the business of the corporation and in regard to the power to represent the corporation in the carrying on of its business: Provided that the consent in writing of a member holding a member's interest of at least seventy-five per cent, or of members holding together at least that percentage of the members' interest, in the corporation, shall be required for -
  - (i) a change in the principal business carried on by the corporation;
  - (ii) a disposal of the whole, or substantially the whole, undertaking of the corporation;
  - (iii) a disposal of all, or the greater portion of, the assets of the corporation; and
  - (iv) any acquisition or disposal of immovable property by the corporation;
- (c) differences between members as to matters connected with a corporation's business shall be decided by majority vote at a meeting of members of the corporation;
- (d) at any meeting of members of a corporation each member shall have the number of votes that corresponds with the percentage of his interest in the corporation;
- (e) a corporation shall indemnify every member in respect of expenditure incurred or to be incurred by him -
  - (i) in the ordinary and proper conduct of the business of the corporation; and

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- (ii) in regard to anything done or to be done for the preservation of the business or property of the corporation; and
- (f) payments by a corporation to its members by reason only of their membership in terms of section 51(1) shall be of such amounts and be effected at such times as the members may from time to time agree upon, and such payments shall be made to members in proportion to their respective interests in the corporation.
- (g) Subject to section 37, if a member of a corporation desires to sell his or her interest in the corporation, or a portion of such interest, he or she shall give a written notice of his or her intention to sell to other members of the corporation, and state the price at which he or she desires to sell such interest or portion, and -
  - (i) the members concerned, or the corporation, shall have an option to purchase such interest or portion within a period of two months of the date of receipt of the notice;
  - (ii) if more than one offer for such interest or portion is made, such interest or portion shall be sold to the persons concerned in equal percentages;
  - (iii) if the members of the corporation cannot agree on the selling price of such interest or portion, the selling price shall be the true and fair value determined by -
    - (aa) the accounting officer of the corporation, if so agreed thereto by all members interested in the sale; or
    - (bb) failing such an agreement, a person registered as a public accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) and designated by the President of the Institute of Chartered Accountants of Namibia; and
  - (iv) if none of the members of the corporation, or the corporation, offers to purchase such interest or portion within the period referred to in subparagraph (i), or if the corporation, or members of the corporation, offer to purchase only a portion of such interest or portion, the member making the offer may sell the interest or the unsold portion thereof, as the case may be, to any other person qualifying for membership under section 29.

[paragraph (g) inserted by Act 8 of 1994]

**Disqualified members regarding management of business of corporation**

47. (1) Notwithstanding any other provision of this Act or in any association agreement or any other agreement between members to the contrary, the following persons shall be disqualified from taking part in the management of a corporation:

[introductory phrase amended by Act 8 of 1994; changes in punctuation not indicated by amendment markings]

- (a) Any person under legal disability, except -
  - (i) a married woman, whether subject to the marital power of her husband or not; and

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- (ii) a minor who has attained at least the age of 18 years and whose guardian has lodged with the corporation a written consent to the minor's participation in the management of the business of the corporation;
- (b) save under authority of a Court -
  - (i) an unrehabilitated insolvent;
  - (ii) any person removed from an office of trust on account of misconduct;
  - (iii) any person who has at any time been convicted in Namibia or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, any offence under any act preventing corruption, or any offence involving dishonesty or in connection with the formation or management of a company or a corporation, and has been sentenced therefor to imprisonment for at least six months without the option of a fine; and
- (c) any person who is subject to any order of a Court under the Companies Act disqualifying him from being a director of a company.

(2) Any person disqualified under the provisions of subsection (1)(b) or (c) who directly or indirectly takes part in or is concerned with the management of the business of any corporation, shall be guilty of an offence.

**Meetings of members**

**48.** (1) Any member of a corporation may by notice to every other member and every other person entitled to attend a meeting of members, call a meeting of members for any purpose disclosed in the notice.

- (2) Unless an association agreement provides otherwise -
  - (a) a notice referred to in subsection (1) shall, as regards the date, time and venue of the meeting, fix a reasonable date and time, and a venue which is reasonably suitable for all persons entitled to attend the particular meeting;
  - (b) three-fourths of the members present in person at the meeting, shall constitute a quorum; and
  - (c) only members present in person or by proxy at the meeting may vote at that meeting.

[paragraph (c) amended by Act 8 of 1994;  
amendment markings are incomplete]

- (3) (a) A corporation shall record a report of the proceedings at a meeting of its members within fourteen days after the date on which the meeting was held in a minute book which shall be kept at the registered office of the corporation.
- (b) A resolution in writing, signed by all the members and entered into the minute book, shall be as valid and effective as if it were passed at a meeting of the members duly convened and held.

**Unfairly prejudicial conduct**

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**49.** (1) Any member of a corporation who alleges that any particular act or omission of the corporation or of one or more other members is unfairly prejudicial, unjust or inequitable to him, or to some members including him, or that the affairs of the corporation are being conducted in a manner unfairly prejudicial, unjust or inequitable to him, or to some members including him, may make an application to a Court for an order under this section.

(2) If on any such application it appears to the Court that the particular act or omission is unfairly prejudicial, unjust or inequitable as contemplated in subsection (1), or that the corporation's affairs are being conducted as so contemplated, and if the Court considers it just and equitable, the Court may with a view to settling the dispute make such order as it thinks fit, whether for regulating the future conduct of the affairs of the corporation or for the purchase of the interest of any member of the corporation by other members thereof or by the corporation.

(3) When an order under this section makes any alteration or addition to the relevant founding statement or association agreement, or replaces any association agreement, the alteration or addition or replacement shall have effect as if it were duly made by agreement of the members concerned.

(4) A copy of an order made under this section which -

(a) alters or adds to a founding statement shall within twenty-eight days of the making thereof be lodged by the corporation with the Registrar for registration;

(b) alters or adds to or replaces any association agreement, shall be kept by the corporation at its registered office where any member of the corporation may inspect it.

(5) Any corporation which fails to comply with any provision of subsection (4) shall be guilty of an offence.

**Proceedings against fellow-members on behalf of corporation**

**50.** (1) Where a member or a former member of a corporation is liable to the corporation -

(a) to make an initial contribution or any additional contribution contemplated in subsection (1) and (2)(a), respectively, of section 24; or

(b) on account of -

(i) the breach of a duty arising from his fiduciary relationship to the corporation in terms of section 42; or

(ii) negligence in terms of section 43,

any other member of the corporation may institute proceedings in respect of any such liability on behalf of the corporation against such member or former member after notifying all other members of the corporation of his intention to do so.

(2) After the institution of such proceedings by a member the leave of the Court concerned shall be required for a withdrawal of the proceedings or for any settlement of the claim, and the Court may in connection with such withdrawal or settlement make such orders as it may deem fit.

(3) If a Court in any particular case finds that the proceedings, if unsuccessful, have been instituted without *prima facie* grounds, it may order the member who has instituted them on behalf of the corporation, himself to pay the costs of the corporation and of the defendant in question in such manner as the Court may determine.

### **Payments by corporation to members**

**51.** (1) Any payment by a corporation to any member by reason only of his membership, may be made only -

- (a) if, after such payment is made, the corporation's assets, fairly valued, exceed all its liabilities;
- (b) if the corporation is able to pay its debts as they become due in the ordinary course of its business; and
- (c) if such payment will in the particular circumstances not in fact render the corporation unable to pay its debts as they become due in the ordinary course of its business.

(2) A member shall be liable to a corporation for any payment received contrary to any provision of subsection (1).

(3) For the purposes of this section -

- (a) without prejudice to the generality of the expression "payment by a corporation to any member by reason only of his membership", that expression -
  - (i) shall include a distribution, or a repayment of any contribution, or part thereof, to a member;
  - (ii) shall exclude any payment to a member in his capacity as a creditor of the relevant corporation and, in particular, a payment as remuneration for services rendered as an employee or officer of the corporation, a repayment of a loan or of interest thereon or a payment of rental; and
- (b) "payment" shall include the delivery or transfer of any property.

### **Prohibition of loans and furnishing of security to members and others by corporation**

**52.** (1) A corporation shall not, directly or indirectly, make a loan -

- (a) to any of its members;
- (b) to any other corporation in which one or more of its members together hold more than a fifty per cent interest; or
- (c) to any company or other juristic person (except a corporation) controlled by one or more members of the corporation,

and shall not provide any security to any person in connection with any obligation of any such member, or other corporation, company or other juristic person.



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(2) The provisions of subsection (1) shall not apply in respect of the making of any particular loan or the provision of any particular security with the express previously obtained consent in writing of all the members of a corporation.

(3) Any member of a corporation who authorizes or permits or is a party to the making of any loan or the provision of any security contrary to any provision of this section -

(a) shall be liable to indemnify the corporation and any other person who had no actual knowledge of the contravention against any loss directly resulting from the invalidity of such loan or security; and

(b) shall be guilty of an offence.

(4) For the purposes of this section -

(a) "loan" includes -

(i) a loan of any property; and

(ii) any credit extended by a corporation where the debt concerned is not payable or is not being paid in accordance with normal business practice in respect of the payment of debts of the same kind;

(b) one or more members of a corporation shall only be deemed to control a company or other juristic person as contemplated in subsection (1)(c), if the circumstances envisaged in section 226(1A)(b) of the Companies Act in relation to a director or manager or his nominee, or directors or managers or their nominees, referred to in that section, and a company or body corporate, are present in respect of any such member or his nominee, or such members or their nominees, and any such company or other juristic person; and

(c) "security" includes a guarantee.

## PART VI

### EXTERNAL RELATIONS

#### Pre-incorporation contracts

**53.** (1) Any contract in writing entered into by a person professing to act as an agent or a trustee for a corporation not yet formed, may after its incorporation be ratified or adopted by such corporation as if the corporation had been duly incorporated at the time when the contract was entered into.

(2) The ratification or adoption by a corporation referred to in subsection (1) shall be in the form of a consent in writing of all the members of the corporation, given within a time specified in the contract or, if no time is specified, within a reasonable time after incorporation.

#### Power of members to bind corporation

**54.** (1) Subject to the provisions of this section, any member of a corporation shall in relation to a person who is not a member and is dealing with the corporation, be an agent of the corporation for the purposes of the business of the corporation stated in its founding statement or actually being carried on by it.

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- (2) Any act of a member shall bind corporation, if -
- (a) such act is expressly or impliedly authorized by the corporation, or is subsequently ratified by it; or
  - (b) such act is performed for the carrying on, in the usual way, of business of the kind stated in a founding statement of the corporation or actually being carried on by the corporation at the time of the performance of the act, unless the member so acting has in fact no power to act for the corporation in the particular matter and the person with whom he deals has, or ought reasonably to have, knowledge of the fact that the member has no such power.

(3) Where any act of a member of a corporation is performed for a purpose apparently not connected with the ordinary course of the business of the corporation stated in its founding statement or actually being carried on by it at the time of the performance of the act, the corporation shall not be bound by such act, unless it has in fact been authorized or is ratified as contemplated in subsection (2)(a) by the corporation.

(4) Where any association agreement restricts the power of any member to represent a corporation, or where any member is disqualified under section 47 from participating in the management of the business of a corporation, no act in contravention of the restriction or performed by such disqualified person shall be binding on the corporation with respect to any person who has, or ought reasonably to have, knowledge of such restriction or disqualification.

(5) Where the consent in writing of a member or members of a corporation is in any particular case required in terms of the proviso to section 46(b), no act in contravention of such requirement shall be binding on the corporation with respect to any person who has, or ought reasonably to have, knowledge of the fact that the particular act is performed in contravention of such requirement.

**Application of sections 37 and 226 of Companies Act, 1973**

**55.** (1) If the relationship between any company and any corporation is such that the corporation, if it were a company, would be a holding company of such company, the provisions of section 37 of the Companies Act regarding -

- (a) the employment of funds of a company in a loan to; or
- (b) the provision of any security by a company to another person in connection with an obligation of,

its holding company, or a company which is a subsidiary of that holding company but is not a subsidiary of itself, shall *mutatis mutandis* apply in relation to any such employment of funds or provision of security by any such company in respect of any such corporation and in respect of any company which would be a subsidiary of the corporation were it a company, but which is not a subsidiary of the first-mentioned company.

(2) In the application in terms of subsection (1) of the provisions of subsection (3)(b) of the said section 37 of the Companies Act any reference therein to a director or officer, or a former director or officer, of a holding company, shall be construed as a reference to any member or officer, or former member or officer, of a corporation envisaged in subsection (1).

(3) If the relationship between any company and any corporation is as envisaged in subsection (1), the provisions of section 226 of the Companies Act regarding the making by a

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company of any loan to, or the provision of security by a company to another person in connection with any obligation of -

- (a) any director or manager of the company's holding company or of another company which is a subsidiary of its holding company; or
- (b) another company or another juristic person controlled by one or more directors or managers of the company's holding company or of a company which is a subsidiary of its holding company,

[paragraph (b) amended by Act 8 of 1994]

shall *mutatis mutandis* apply in relation to any such loan or provision of security by any such company in respect of -

- (i) any member or officer of any such corporation, or any director or officer of another company which would be a subsidiary of any such corporation were the corporation a company; and
- (ii) another company or another juristic person controlled by one or more members of any such corporation, or by one or more directors or managers of a company which would be a subsidiary of the corporation were it a company.

[paragraph (ii) amended by Act 8 of 1994; misspelling in original Act corrected without being indicated by amendment markings]

(4) In the application in terms of subsection (3) of the provisions of subsection (5) of the said section 226 of the Companies Act any reference therein to any director or officer of a holding company, shall be construed as a reference to any member or officer of a corporation envisaged in subsection (1).

## PART VII

### ACCOUNTING AND DISCLOSURE

#### Accounting records

**56.** (1) A corporation shall keep in the official language of Namibia such accounting records as are necessary fairly to represent the state of affairs and business of the corporation, and to explain the transaction and financial position of the business of the corporation, including -

[introductory phrase amended by Act 8 of 1994; not all changes indicated by amendment markings]

- (a) records showing its assets and liabilities, members' contributions, undrawn profits, revaluations of fixed assets and amounts of loans to and from members;
- (b) a register of fixed assets showing in respect thereof the respective dates of any acquisition and the cost thereof, depreciation (if any) and where any asset has been revalued, the date of the revaluation and the revalued amount thereof, the respective dates of any disposals and the consideration received in respect thereof: Provided that in the case of a corporation which has been converted from a company in terms of section 27, the existing fixed asset register of the company shall be deemed to be such a register in respect of the corporation, and such particulars therein shall be deemed to apply in respect of it;

**[paragraph (b) amended by Act 8 of 1994]**

- (c) records containing entries from day to day of all cash received and paid out, in sufficient details to enable the nature of the transactions and, except in the case of cash sales, the names of the parties to the transactions to be identified;
  - (d) records of all goods purchased and sold on credit, and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified;
  - (e) statements of the annual stocktaking, and records to enable the value of stock at the end of the financial year to be determined; and
  - (f) vouchers supporting entries in the accounting records.
- (2) The accounting records relating to -
- (a) contributions by members;
  - (b) loans to and from members; and
  - (c) payments to members,

shall contain sufficient detail of individual transactions to enable the nature and purpose thereof to be clearly identified.

(3) The accounting records referred to in subsection (1) shall be kept in such a manner as to provide adequate precautions against falsification and to facilitate the discovery of any falsification.

(4) The accounting records shall be kept at the place or places of business or at the registered office of the corporation and shall, wherever kept, be open at all reasonable times for inspection by any member.

- (5) (a) Any corporation which fails to comply with any provision of any of the preceding subsections of this section, and every member thereof who is a party to such failure or who fails to take all reasonable steps to secure compliance by the corporation with any such provision, shall be guilty of an offence.
- (b) In any proceedings against any member of a corporation in respect of an offence consisting of a failure to take reasonable steps to secure compliance by a corporation with any provision referred to in paragraph (a), it shall be a defence if it is proved that the accused had reasonable grounds for believing and did believe that a competent and reliable person was charged with the duty of seeing that any such provision was complied with, and that such person was in a position to discharge that duty, and that the accused had no reason to believe that such person had in any way failed to discharge that duty.

**Financial year of corporation**

**57.** (1) The financial year of a corporation shall be its annual accounting period, which shall, subject to subsections (2), (3) and (4), be not less than 12 months and end on the date stated in its founding statement in accordance with paragraph (g)(ii) of section 12.

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(2) The date referred to in subsection (1) may, subject to section 15(2), be changed by the corporation -

- (a) to a date being not more than six months earlier; or
- (b) to a date being not more than six months later,

but any such change shall not be made more than once in a financial year, and, in the case of a change contemplated in paragraph (b), the prescribed additional amount in respect of the annual duty shall be payable for any period by which the financial year is extended.

(3) The first financial year of a corporation shall commence on the date of its registration and shall end on the date referred to in subsection (1) occurring not less than 3 nor more than 15 months after the date of registration: Provided that the first financial year of a corporation converted from a company in terms of section 27, shall end on the date on which the financial year of the company would have ended had it not been so converted.

[The word "nor" in the phrase "not less than 3 nor more than 15 months" should be "or" to be grammatically correct.]

(4) The financial year of a corporation, which has in terms of subsection (2) changed the date referred to in subsection (1), shall commence at the end of the previous financial year and shall end on the date, as changed, occurring not less than 3 nor more than 18 months after the end of that previous financial year.

[section 57 substituted by Act 8 of 1994]

**Annual financial statements**

**58.** (1) The members of a corporation shall within nine months after the end of every financial year of the corporation cause financial statements in respect of that financial year to be prepared in the official language of Namibia.

[subsection (1) amended by Act 8 of 1994]

- (2) The financial statements of a corporation -
  - (a) shall consist of -
    - (i) a balance sheet and any notes thereon; and
    - (ii) an income statement or any similar financial statement where such form is appropriate, and any notes thereon;
  - (b) shall in conformity with generally accepted accounting practice, appropriate to the business of the corporation, fairly present the state of affairs of the corporation as at the end of the financial year concerned, and the results of its operations for that year;
  - (c) shall disclose separately the aggregate amounts, as at the end of the financial year, of contributions by members, undrawn profits, revaluations of fixed assets and amounts of loans to or from members, and the movements in these amounts during the year;

[The word "separately" is misspelt in the *Official Gazette*, as reproduced above.]

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- (d) shall be in agreement with the accounting records, which shall be summarised in such a form that -
  - (i) compliance with the provisions of this subsection is made possible; and
  - (ii) an accounting officer is enabled to report to the corporation in terms of section 62(1)(c) without it being necessary to refer to any subsidiary accounting records and vouchers supporting the entries in the accounting records: Provided that nothing contained in this paragraph shall be construed as preventing an accounting officer, if he deems it necessary, from inspecting such subsidiary accounting records and vouchers; and
- (e) shall contain the report of the accounting officer referred to in section 62(1)(c).

(3) The annual financial statements shall be approved and signed by a member holding a member's interest of at least 51 per cent, or members together holding members' interests of at least 51 per cent, in the corporation.

**[subsection (3) substituted by Act 8 of 1994]**

- (4) (a) Any member of a corporation who fails to take all reasonable steps to comply or to secure compliance with any provision of this section, shall be guilty of an offence.
- (b) In any proceedings against any member of a corporation under paragraph (a) the defence referred to in section 56(5)(b) shall be available to him.

**Appointment of accounting officers**

**59.** (1) Every corporation shall, subject to section 60, appoint an accounting officer who has in writing consented thereto.

**[subsection (1) substituted by Act 8 of 1994]**

(2) The appointment of the first accounting officer of a corporation referred to in section 12(g)(i) shall take effect on the date of the registration of the corporation.

(3) If a vacancy occurs in the office of an accounting officer, whether as a result of removal, resignation or otherwise, the corporation shall within 14 days appoint another accounting officer and comply with the provisions of subsection (2) of section 15: Provided that the provisions of subsection (5) of the said section 15 shall apply where the said subsection (2) of that section has not so been complied with, whether or not an appointment of such other accounting officer has been made.

**[subsection (3) amended by Act 8 of 1994]**

- (4) A corporation shall inform its accounting officer in writing of his removal from office.
- (5) (a) An accounting officer shall on resignation or removal from office forthwith inform every member of the corporation thereof in writing, and shall send a copy of the letter to the last known address of the registered office of the corporation and shall in addition forthwith by certified post inform the Registrar -
  - (i) that he or she has resigned or been removed from office;

- (ii) of the date of his or her resignation or removal from office;
- (iii) of the date up to which he or she performed his or her duties;
- (iv) of any matters with respect to the financial affairs of the corporation of which he or she was aware, at the time of his or her resignation or removal, which were in contravention of the provisions of this Act.

[paragraph (a) amended by Act 8 of 1994]

- (b) If an accounting officer who has been removed from office is of the opinion that he was removed for improper reasons, he shall forthwith by certified post inform the Registrar thereof, and shall send a copy of the letter to every member.

### Qualifications of accounting officers

**60.** (1) No person shall be qualified for appointment as an accounting officer of a corporation, unless he is a member of a recognized profession which -

- (a) as a condition for membership, requires its members to have passed examinations in accounting and related fields of study which in the opinion of the Minister would qualify such members to perform the duties of an accounting officer under this Act;
- (b) has the power to exclude from membership those persons found guilty of negligence in the performance of their duties or of conduct which is discreditable to their profession; and
- (c) has been named in a notice referred to in subsection (2).

(2) The Minister may from time to time publish by notice in the *Gazette* the names of those professions whose members are qualified to perform the duties of an accounting officer in terms of this Act.

(3) A member or employee of a corporation, and a firm whose partner or employee is a member or employee of a corporation, shall not qualify for appointment as an accounting officer of such corporation unless all the members consent in writing to such appointment.

(4) A firm may be appointed as an accounting officer of a corporation, provided that each partner in the firm is qualified to be so appointed.

### Right of access and remuneration of accounting officers

**61.** (1) An accounting officer of a corporation shall at all times have a right of access to the accounting records and all the books and documents of the corporation, and to require from members such information and explanations as he considers necessary for the performance of his duties as an accounting officer.

(2) The remuneration of an accounting officer shall be determined by agreement with the corporation.

### Duties of accounting officers

**62.** (1) The accounting officer of a corporation shall, not later than three months after completion of the annual financial statements -

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- (a) subject to the provisions of section 58(2)(d), determine whether the annual financial statements are in agreement with the accounting records of the corporation;
- (b) review the appropriateness of the accounting policies represented to the accounting officer as having been applied in the preparation of the annual financial statements; and

[paragraph (b) amended by Act 8 of 1994;  
the amendment markings are incomplete]

- (c) report in respect of paragraphs (a) and (b) to the corporation.
- (2) (a) If during the performance of his duties an accounting officer becomes aware of any contravention of a provision of this Act, he shall describe the nature of such contravention in this report.
- (b) Where an accounting officer is a member or employee of a corporation, or is a firm of which a partner or employee is a member or employee of the corporation, his report shall state that fact.
- (3) If an accounting officer of a corporation -
- (a) at any time knows, or has reason to believe, that the corporation is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future; or
  - (b) during the performance of his duties finds -
    - (i) that any change, during a relevant financial year, in respect of any particulars mentioned in the relevant founding statement has not been registered;
    - (ii) that the annual financial statements indicate that as at the end of the financial year concerned the corporation's liabilities exceed its assets; or
    - (iii) that the annual financial statements incorrectly indicate that as at the end of the financial year concerned the assets of the corporation exceed its liabilities, or has reason to believe that such an incorrect indication is given,

he shall forthwith by certified post report accordingly to the Registrar.

(4) If an accounting officer of a corporation has in accordance with subsection (3)(b)(ii) or (iii) reported to the registrar that -

- (a) the annual financial statements of the corporation concerned indicate that as at the end of the financial year the corporation's liabilities exceed its assets;
- (b) the annual financial statements incorrectly indicate that as at the end of the financial year concerned the assets of the corporation exceed its liabilities; or
- (c) he or she has reason to believe that such an incorrect indication is given,

and he or she finds that any subsequent financial statements of the corporation concerned indicate that the situation has changed or has been rectified and that the assets concerned then



exceed the liabilities or that they no longer incorrectly indicate that the assets exceed the liabilities or that he or she no longer has reason to believe that such an incorrect indication is given, as the case may be, he or she shall report to the Registrar accordingly.

[subsection (4) inserted by Act 8 of 1994]

## PART VIII

### LIABILITY OF MEMBERS AND OTHERS FOR DEBTS OF CLOSE CORPORATION

#### Joint liability for debts of corporation

63. Notwithstanding anything to the contrary contained in any provision of this Act, the following persons shall in the following circumstances together with a corporation be jointly and severally liable for the specified debts of the corporation:

- (a) Where the name of the corporation is in any way used without the abbreviation “CC” as required by section 22(1), any member of the corporation who is responsible for, or who authorized or knowingly permits the omission of such abbreviation, shall be so liable to any person who enters into any transaction with the corporation from which a debt accrues for the corporation while he or she, in consequence of such omission, is not aware that he or she is dealing with a corporation;

[paragraph (a) amended by Act 8 of 1994;  
changes in punctuation not indicated by amendment markings]

- (b) where any member fails to pay money or to deliver or transfer property to the corporation as required by section 24(4), he shall be so liable for every debt of the corporation incurred from its registration to the date of the actual payment, delivery or transfer of such money or property;
- (c) where the number of members of a corporation exceeds the maximum specified in section 28 for a period of six months, every such member shall be so liable for every debt of the corporation incurred while the number of members so exceeded or continues to exceed such maximum;
- (d) where a juristic person or a trustee of a trust *inter vivos* in that capacity purports to hold, whether directly or indirectly, a member’s interest in the corporation in contravention of any provision of section 29, such juristic person or trustee of a trust *inter vivos* and any nominee referred to in that section shall, notwithstanding the invalidity of the holding of such interest, be so liable for every debt of the corporation incurred during the time the contravention continues;

[paragraph (d) amended by Act 8 of 1994]

- (e) where the corporation makes a payment in respect of the acquisition of a member’s interest in contravention of any provision of section 39, every person who is a member at the time of such payment and who is aware of the making of such payment, including a member or a former member who receives or who received such payment, shall be so liable for every debt of the corporation incurred prior to the making of such payment unless, in the case of a member who is so aware, he proves that he took all reasonable steps to prevent the payment;

- (f) where the corporation gives financial assistance for the purpose of or in connection with any acquisition of a member's interest in contravention of any provision of section 40, every person who is a member at the time of the giving of such assistance, and who is aware of the giving of such assistance, and the person who receives such assistance, shall be so liable for every debt of the corporation incurred prior to the giving of such assistance unless, in the case of a member who is so aware, he proves that he took all reasonable steps to prevent the payment;

[The word "assistance" is misspelt in the *Official Gazette* in its second and fourth uses in paragraph (f), as reproduced above.]

- (g) where a person takes part in the management of the business of the corporation while disqualified from doing so in terms of section 47(1)(b) or (c), that person shall be so liable for every debt of the corporation which it incurs as a result of his participation in the management of the corporation; and
- (h) where the office of accounting officer of the corporation is vacant for a period of six months, any person who at any time during that period was a member and aware of the vacancy, and who at the expiration of that period is still a member, shall be so liable for every debt of the corporation incurred during such existence of the vacancy and for every such debt thereafter incurred while the vacancy continues and he still is a member.

[The word "corporation" is misspelt in the *Official Gazette* in its second use in paragraph (h), as reproduced above.]

#### **Liability for reckless or fraudulent carrying on of business of corporation**

**64.** (1) If it at any time appears that any business of a corporation was or is being carried on recklessly, with gross negligence or with intent to defraud any person or for any fraudulent purpose, a Court may on the application of the Master, or any creditor, member or liquidator of the corporation, declare that any person who was knowingly a party to the carrying on of the business in any such manner, shall be personally liable for all or any of such debts or other liabilities of the corporation as the Court may direct, and the Court may give such further orders as it considers proper for the purpose of giving effect to the declaration and enforcing that liability.

(2) Without prejudice to any other criminal liability incurred where any business of a corporation is carried on in any manner contemplated in subsection (1), every person who is knowingly a party to the carrying on of the business in any such manner, shall be guilty of an offence.

#### **Powers of Court in case of abuse of separate juristic personality of corporation**

**65.** Whenever a Court on application by an interested person, or in any proceedings in which a corporation is involved, finds that the incorporation of, or any use of, that corporation, constitutes a gross abuse of the juristic personality of the corporation as a separate entity, the Court may declare that the corporation is to be deemed not to be a juristic person in respect of such rights, obligations or liabilities of the corporation, or of such member or members thereof, or of such other person or persons, as are specified in the declaration, and the Court may give such further order or orders as it may deem fit in order to give effect to such declaration.

### **PART IX**

#### **WINDING-UP**

**Application of Companies Act, 1973**

**66.** (1) The provisions of the Companies Act which relate to the winding-up of a company, including the regulations made thereunder, (except sections 337, 338, 344, 345, 346(2), 347(3), 349, 364, 365(2), 367 to 370, inclusive 377, 387, 389, 390, 395 to 399, inclusive, 400(1)(b), 401, 402, 417, 418, 419(4), 421, 423 and 424), shall apply *mutatis mutandis* and in so far as they can be applied to the liquidation of a corporation in respect of any matter not specifically provided for in this Part or in any other provision of this Act.

(2) For the purposes of subsection (1) -

(a) any reference in a relevant provision of the Companies Act, and in any provision of the Insolvency Act, 1936 (Act 24 of 1936), made applicable by any such provision -

- (i) to a company, shall be construed as a reference to a corporation;
- (ii) to a share in a company, shall be construed as a reference to a member's interest in a corporation;
- (iii) to a member, director, shareholder or contributory of a company, shall be construed as a reference to a member of a corporation;
- (iv) to an auditor of a company, shall be construed as a reference to an accounting officer of a corporation;
- (v) to an officer or a secretary of a company, shall be construed as a reference to a manager or a secretary who is an officer of a corporation;
- (vi) to a registered office of a company, shall be construed as a reference to a registered office of a corporation;
- (vii) to a memorandum or articles of association of a company, shall be construed as a reference to a founding statement and an association agreement of a corporation, respectively;
- (viii) to the Registrar of Companies, shall be construed as a reference to the Registrar;
- (ix) to the Companies Act or the regulations made thereunder, or to any provision thereof, shall be construed as including a reference to this Act or the regulations made thereunder, or to any corresponding provision thereof, as the case may be;
- (x) to an insolvent estate, shall be construed as a reference to a corporation;
- (xi) to a provisional liquidator of a company, or to a liquidator of a company or a trustee of an insolvent estate, shall be construed as a reference to a provisional liquidator and to a liquidator of a corporation, respectively;
- (xii) to the sheriff, shall be construed as including a reference to a messenger of a magistrate's court;
- (xiii) to the Registrar of the Court, shall be construed as including a reference to a clerk of a magistrate's court; and

- (xiv) to a Court, shall be construed as a reference to a Court having jurisdiction under this Act;
- (b) a reference to a special resolution -
  - (i) referred to in sections 340(2), 350(1), 351(1), 352, 356(2), 357(3) and (4), 359(1), 362(1) and 363(1) of the Companies Act, shall be construed as a reference to a written resolution for the voluntary winding-up of a corporation in terms of section 67 of this Act; and
  - (ii) referred to in section 422(1)(b) of the Companies Act, shall be construed as a reference to a written resolution signed by or on behalf of all the members of a corporation; and
- (c) it shall be deemed that the following paragraph has been substituted for paragraph (b) of section 358 of the Companies Act:
  - “(b) where any other action or proceeding is being or about to be instituted against the company in any court in Namibia, apply to such court for an order restraining further proceedings in the action or proceeding.”

### **Voluntary winding-up**

**67.** (1) A corporation may be wound up voluntarily if all its members so resolve at a meeting of members called for the purpose of considering the winding-up of the corporation, and sign a written resolution that the corporation be wound up voluntarily by members or creditors, as the case may be.

(2) A copy of the written resolution, in duplicate in the prescribed form, shall be lodged within twenty-eight days after the date of the passing of the resolution, together with the prescribed fee, with the Registrar, who shall register such resolution if it complies with the provisions of subsection (1).

(3) If such copy of the written resolution is not so registered by the Registrar within ninety days from the date of the passing of the resolution, the resolution shall lapse and be void.

(4) A resolution in terms of this section shall not take effect until it has been registered by the Registrar.

### **Liquidation by Court**

- 68.** A corporation may be wound up by a Court, if -
- (a) members having more than one half of the total number of votes of members, have so resolved at a meeting of members called for the purpose of considering the winding-up of the corporation, and have signed a written resolution that the corporation be wound up by a Court;
  - (b) the corporation has not commenced its business within a year from its registration, or has suspended its business for a whole year;
  - (c) the corporation is unable to pay its debts; or

- (d) it appears on application to the Court that it is just and equitable that the corporation be wound up.

### **Circumstances under which corporation deemed unable to pay debts**

**69.** (1) For the purposes of section 68(c) a corporation shall be deemed to be unable to pay its debts, if -

- (a) a creditor, by cession or otherwise, to whom the corporation is indebted in a sum of not less than two hundred rand then due has served on the corporation, by delivering it at its registered office, a demand requiring the corporation to pay the sum so due, and the corporation has for twenty-one days thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) any process issued on a judgement, decree or order of any court in favour of a creditor of the corporation is returned by a sheriff, or a messenger of a magistrate's court, with an endorsement that he has not found sufficient disposable property to satisfy the judgement, decree or order, or that any disposable property found did not upon sale satisfy such process; or
- (c) it is proved to the satisfaction of the Court that the corporation is unable to pay its debts.

(2) In determining for the purposes of subsection (1) whether a corporation is unable to pay its debts, the Court shall also take into account the contingent and prospective liabilities of the corporation.

[The word "contingent" is misspelt in the *Official Gazette*, as reproduced above.]

### **Repayments by members**

**70.** (1) Subject to the provisions of this section, no member of a corporation shall in the winding-up of the corporation be liable for the repayment of any payment made by the corporation to him by reason only of his membership, if such payment complies with the requirements of section 51(1).

(2) In the winding-up of a corporation unable to pay its debts, any such payment made to a member by reason only of his membership within a period of two years before the commencement of the winding-up of the corporation, shall be repaid to the corporation by the member, unless such member can prove that -

- (a) after such payment was made, the corporation's assets, fairly valued, exceeded all its liabilities; and
- (b) such payment was made while the corporation was able to pay its debts as they become due in the ordinary course of its business; and
- (c) such payment, in the particular circumstances, did not in fact render the corporation unable to pay its debts as they became due in the ordinary course of its business.

(3) A person who has ceased to be a member of the corporation concerned within the said period of two years, shall also be liable for any repayment provided for in subsection (2) if, and to the extent that, repayments by present members, together with all other available assets, are insufficient for paying all the debts of the corporation.

(4) A certificate given by the Master as to the amount payable by any member or former member in terms of subsection (2) or (3) to the corporation, may be forwarded by the liquidator to the clerk of the magistrate's court in whose area of jurisdiction the registered office of the corporation is situated, who shall record it, and thereupon such notice shall have the effect of a civil judgement of that magistrate's court against the member or former member concerned.

(5) The court in question may, on application by a member or former member referred to in subsection (3), make any order that it deems fit in regard to any certificate referred to in subsection (4).

### Repayment of salary or remuneration by members

71. (1) If a corporation being wound up is unable to pay its debts, and -
- (a) any direct or indirect payment of a salary or other remuneration was made by the corporation within a period of two years before the commencement of its winding-up to a member in his capacity as an officer or employee of the corporation; and
  - (b) such payment was, in the opinion of the Master, not *bona fide* or reasonable in the circumstances,

the Master shall direct that such payment, or such part thereof as he may determine, be repaid by such member to the corporation.

(2) A person who has within a period of two years referred to in subsection (1)(a) ceased to be a member of a corporation referred to in that subsection may, under the circumstances referred to therein, be directed by the Master to make a repayment provided for in subsection (1), if, and to the extent that, any such repayments by present members are, together with all other available assets, insufficient for paying all the debts of the corporation.

(3) The provisions of subsections (4) and (5) of section 70 shall *mutatis mutandis* apply in respect of any repayment to a corporation in terms of subsection (1) or (2).

### Composition

72. (1) In the winding-up of a corporation unable to pay its debts, the members of the corporation may at any time after the first meeting of creditors submit to the Liquidator a written offer of composition, signed by the members holding more than fifty per cent of members' interests in the corporation.

- (2) (a) The provisions of sections 119, 120, 123 and 124(1) and (5) of the Insolvency Act, 1936 (Act 24 of 1936), shall *mutatis mutandis* apply in respect of the procedure and effect of any such composition, and the liquidator's functions thereunder.
- (b) For the purposes of paragraph (a), any reference in any provision referred to therein -
  - (i) to an insolvent or insolvent estate, shall be construed as a reference to the corporation concerned;
  - (ii) to a trustee shall be construed as a reference to the liquidator of the corporation concerned; and

- (iii) to the rehabilitation of an insolvent, shall be construed as a reference to the setting aside of the winding-up of the corporation concerned.

### **Repayments, payments of damages and restoration of property by members and others**

73. (1) Where in the course of the winding-up of a corporation it appears that any person who has taken part in the formation of the corporation, or any former or present member, officer or accounting officer of the corporation has misapplied or retained or become liable or accountable for any money or property of the corporation, or has been guilty of any breach of trust in relation to the corporation, a Court may, on the application of the Master or of the liquidator or of any creditor or member of the corporation, inquire into the conduct of such person, member, officer or accounting officer and may order him to repay or restore the money or property, or any part thereof, with interest at such rate as the Court considers just, or to contribute such sum to the assets of the corporation by way of compensation or damages in respect of the misapplication, retention or breach of trust, as the Court considers just.

(2) The provisions of subsection (1) shall apply in respect of any person, member, officer or accounting officer referred to therein, notwithstanding the fact that such person may also be criminally responsible in respect of any conduct contemplated therein.

### **Appointment of liquidator**

74. (1) For the purposes of conducting the proceedings in a winding-up of a corporation, the Master shall appoint a suitable natural person as liquidator.

(2) The Master shall make an appointment as soon as is practicable after a provisional winding-up order has been made, or a copy of a resolution for the voluntary winding-up has been registered in terms of section 67(2).

(3) When the Master in the case of a voluntary winding-up by members makes an appointment, he shall take into consideration any further resolution at a meeting of members nominating a person as liquidator.

(4) In the case of a creditors' voluntary winding-up and a winding-up by the Court, the Master shall, subject to the provisions of section 76, if a person is nominated as co-liquidator at the first meeting of creditors, appoint such person as co-liquidator as soon as he has given security to the satisfaction of the Master for the proper performance of his duties.

### **Vacancies in office of liquidators**

75. (1) When a vacancy occurs in the office of a liquidator of a corporation, the Master may -

- (a) where the vacancy occurs in the office of a liquidator nominated by members or creditors, direct any remaining liquidator to convene a meeting of creditors or members, as the case may be, to nominate a liquidator to fill the vacancy;
- (b) in a case other than a case contemplated in paragraph (a), if he is of opinion that any remaining liquidator will be able to complete the winding-up, dispense with the appointment of a liquidator to fill the vacancy, and direct the remaining liquidator to complete the winding-up; or
- (c) in any other case, appoint a liquidator to fill the vacancy.

(2) The provisions of the Companies Act relating to the nomination or appointment of a liquidator, as applied by section 66 of this Act, and of this Act, shall apply to the nomination or appointment of a liquidator to fill a vacancy in the office of liquidator.

### **Refusal by Master to appoint nominated person as liquidator**

76. (1) If a person who has been nominated as liquidator by any meeting of creditors or of members of a corporation was not properly nominated, or is disqualified from being nominated or appointed as liquidator pursuant to section 372 or 373 of the Companies Act, as applied by section 66 of this Act, or has failed to give within a period of twenty-one days as from the date upon which he was notified that the Master had accepted his nomination or within such further period as the Master may allow, the security mentioned in section 375(1) of the Companies Act, as so applied, or, if in the opinion of the Master the person nominated as liquidator should not be appointed as liquidator of the corporation concerned, the Master shall give notice in writing to the person so nominated that he declines to accept his nomination or to appoint him as liquidator, and shall in such notice state his reasons for declining to accept his nomination or to appoint him: Provided that if the Master declines to accept the nomination for appointment as liquidator because he is of the opinion that the person nominated should not be appointed as liquidator, it shall be sufficient if the Master states in that notice, as such reason, that he is of the opinion that the person nominated should not be appointed as liquidator of the corporation concerned.

- (2) (a) When the Master has so declined to accept the nomination of any person or to appoint him as liquidator, or when the Minister has under section 371(3) of the Companies Act, as applied by section 66 of this Act, set aside the appointment of a liquidator, the Master shall convene a meeting of creditors or members, as the case may be, of the corporation concerned for the purpose of nominating another person for appointment as liquidator.
- (b) In the notice convening any said meeting the Master shall state that he has declined to accept the nomination for appointment as liquidator of the person previously nominated, or to appoint the person so nominated and, subject to the proviso to subsection (1), the reasons therefor, or that the appointment of the person previously appointed as liquidator has so been set aside by the Minister, as the case may be, and that the meetings are convened for the purpose of nominating another person for appointment as liquidator.
- (c) The Master shall post a copy of such notice to every creditor whose claim against the company was previously proved and admitted.
- (d) Any meeting referred to in paragraph (a) shall be deemed to be a continuation of the relevant first meeting of creditors or of members, or of any such meeting referred to in section 75, as the case may be.

(3) If the Master again so declines for any reason mentioned in subsection (1) to accept the nomination for appointment as liquidator by any meeting referred to in subsection (2), or to appoint a person so nominated -

- (a) he shall act in accordance with the provisions of subsection (1); and
- (b) if the person so nominated as sole liquidator has not or if all the persons so nominated have not been appointed by him, he shall appoint as liquidator or liquidators of the corporation concerned any other person or persons not disqualified from being liquidator of that corporation.



**Resignation and absence of liquidator**

77. (1) At the request of a liquidator the Master may relieve him of his office upon such conditions as the Master may think fit.

(2) A liquidator shall not be absent from Namibia for a period exceeding sixty days, unless -

- (a) the Master has before his departure from Namibia granted him permission in writing to be absent; and
- (b) he complies with such conditions as the Master may think fit to impose.

(3) Every liquidator who is relieved of his office by the Master, or who is permitted to absent himself for a period exceeding sixty days from Namibia, shall give notice thereof in the *Gazette*.

**First meeting of creditors and members**

78. (1) A liquidator shall as soon as may be and, except with the consent of the Master, not later than one month after a final winding-up order has been made by a Court or a resolution of the creditors' voluntary winding-up has been registered -

- (a) summon a meeting of the creditors of the corporation for the purpose of -

[The word "summon" is misspelt in the *Official Gazette*, as reproduced above.]

- (i) considering the statement as to the affairs of the corporation lodged with the Master;
  - (ii) the proving of claims against the corporation;
  - (iii) deciding whether a co-liquidator should be appointed and, if so, nominating a person for appointment; and
  - (iv) receiving or obtaining, in a winding-up by the Court or a creditors' voluntary winding-up, directions or authorization in respect of any matter regarding the liquidation; and
- (b) summon a meeting of members of the corporation for the purpose of -
    - (i) considering the said statement as to the affairs of the corporation, unless the meeting of members when passing a resolution for the voluntary winding-up of the corporation has already considered the said statement; and
    - (ii) receiving or obtaining directions or authorization in respect of any matter regarding the liquidation.
- (2) (a) The provisions of the law relating to insolvency in respect of voting, the manner of voting and voting by an agent at meetings of creditors, shall apply *mutatis mutandis* in respect of any meeting referred to in this section: Provided that in a winding-up by the Court a member or former member of a corporation shall have no voting right in respect of the nomination of a liquidator based on his loan account with the corporation or claims for arrear salary, travelling expenses or

allowances due by the corporation, or claims paid by such member or former member on behalf of the corporation.

- (b) The provisions of paragraph (a) shall *mutatis mutandis* apply in respect of a person to whom a right contemplated in that paragraph has been ceded.

### **Report to creditors and members**

**79.** Except in the case of a members' voluntary winding-up, a liquidator shall, as soon as practicable and, except with the consent of the Master, not later than three months after the date of his appointment, submit to a general meeting of creditors and members of the corporation concerned a report as to the following matters:

- (a) The estimated amounts of the corporation's assets and liabilities;
- (b) if the corporation has failed, the causes of the failure;
- (c) whether or not he has submitted or intends to submit to the Master a report under section 400(2) of the Companies Act, as applied by section 66 of this Act;
- (d) whether or not any member or former member appears to be liable -
  - (i) to the corporation on the ground of breach of trust or negligence;
  - (ii) to make repayments to the corporation in terms of section 70(2) or (3) or section 71(1) or (2);
  - (iii) to either a creditor of the corporation or the corporation itself, as the case may be, by virtue of any provision of Part VIII of this Act;
- (e) any legal proceedings by or against the corporation which may have been pending at the date of the commencement of the winding-up, or which may have been or may be instituted;
- (f) whether or not further enquiry is in his opinion desirable in regard to any matter relating to the formation or failure of the corporation or the conduct of its business;
- (g) whether or not the corporation has kept the accounting records required by section 56 and, if not, in what respects the requirements of that section have not been complied with;
- (h) the progress and prospects in respect of the winding-up; and
- (i) any other matter which he may consider fit, or in connection with which he may require the directions of the creditors.

### **Repayments by members or former members**

**80.** The liquidator of the corporation unable to pay its debts -

- (a) shall ascertain whether members or former members of the corporation are liable in terms of section 70(2) or (3) to make repayments;

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- (b) shall ascertain whether circumstances justify and approach to the Master for a direction that members or former members of the corporation make repayments in terms of section 71(1) or (2);
- (c) may, if necessary, enforce such repayments; and
- (d) may, in the event of the death of such member or former member liable for or directed to make a repayment, or of the insolvency of his estate, claim the amount due from the estate concerned.

**Duties of liquidator regarding liability of members to creditors or corporation**

**81.** (1) The liquidator of a corporation unable to pay its debts shall ascertain whether, on the facts reasonably available to him, there is reason to believe that any member or former member of the corporation, or any other person, has by virtue of any provision of Part VIII of this Act incurred any liability to a creditor of the corporation or to the corporation itself, as the case may be.

(2) If the liquidator finds that there is such reason in respect of any creditor who has proved a claim, he shall in writing inform such creditor accordingly, and if the creditor recovers the amount of his claim or part thereof from such member or former member, or from such other person, the liquidator shall take such recovery into account in determining the dividend payable to the creditor.

(3) In particular the liquidator shall determine whether an application to the Court in terms of section 64(1) is justified and advisable.

**PART X****PENALTIES AND GENERAL****Penalties**

**82.** (1) Any corporation or a member or officer of a corporation or any other person convicted of any offence in terms of this Act, shall be liable to be sentenced, in the case of an offence referred to -

- (a) in section 52, 56 or 64, to a fine not exceeding N\$8 000 or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

[paragraph (a) amended by Act 8 of 1994]

- (b) in section 58, to a fine not exceeding N\$4 000 or imprisonment for a period not exceeding one year, or to both such fine and such imprisonment;

[paragraph (b) amended by Act 8 of 1994]

- (c) in section 20, 22A, 23 or 47, to a fine not exceeding N\$2 000 or imprisonment for a period not exceeding six months, or to both such fine and such imprisonment; and

[paragraph (c) amended by Act 8 of 1994]

- (d) in section 16, 41 or 49, to a fine not exceeding N\$1 000 or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

[paragraph (d) amended by Act 8 of 1994]

[Act 8 of 1994 provides that the amendments made by sections 5, 14 and 30 of Act 8 of 1994 are to come into effect on the amending Act's date of publication (25 July 1994), while the other amendments made by the Act are deemed to have come into force retroactively on 1 March 1994. Sections 5 and 14 deal with criminal matters, while section 30 substitutes terms in the Act to make it appropriate to an independent Namibia. It is possible that the reference to section 30 of Act 98 of 1994 is in error. The intention may have been to refer to section 29 of Act 8 of 1994, which amends the criminal penalties in section 82(1) and thus should not have been made retroactive.]

(2) The Court convicting any such corporation, member, officer or person for failure to perform any act required to be performed by it or him under this Act, may, in addition to any penalty which the Court imposes, order such corporation, member, officer or person to perform such act within such period as the Court may determine.

(3) Any person who, in respect of any offence under any provision of the Companies Act, or of the Insolvency Act, 1936 (Act 24 of 1936), which is made applicable by any provision of this Act, is convicted of any such offence under any such provision as so applied, shall be liable to be sentenced to the penalties which are imposed in respect of any such offence by any applicable provision of the said Companies Act or Insolvency Act, as the case may be.

#### **Short title and commencement**

**83.** This Act shall be called the Close Corporations Act, 1988, and shall come into operation on a date fixed by the Administrator-General by proclamation in the *Gazette*.

[The Act was brought into force after Namibian independence by the President of Namibia.]