

BUSINESS

Close Corporations Act 26 of 1988

Summary: This Act ([OG 5658](#)) provides for the establishment of close corporations. It was brought into force on 1 March 1994 by Proc. 9/1994 ([GG 820](#)).

Amendments: The Act is substantially amended by Act 8/1994 ([GG 891](#)), which came into force on 1 March 1994, *except for* sections 5, 14 and 30 of the amending Act which came into force on 25 July 1994 (section 31 of Act 8/1994).

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)), brought into force on 15 July 1996 by GN 154/1996 ([GG 1340](#)), deletes section 32(2).

The Act is also amended by the Business and Intellectual Property Authority Act 8 of 2016 ([GG 6105](#)), which was brought into force with effect from 16 January 2017 by GN 293/2016 ([GG 6197](#)).

The Abolition of Payment by Cheque Act 16 of 2022 ([GG 7995](#)), which was brought into force on 15 March 2023 by GN 47/2023 ([GG 8050](#)), amends section 23.

Act 5/2023 ([GG 8138](#)) amends section 1 and inserts section 16A.

Regulations: No pre-independence regulations have been located. Post-independence regulations are contained in GN 43/1994 ([GG 829](#)). Regulation 17(1) is amended by GN 83/1994 ([GG 863](#)), GN 97/2006 ([GG 3658](#)), GN 294/2012 ([GG 5094](#)), GN 20/2015 ([GG 5668](#)) (which withdraws GN 294/2012), GN 310/2019 ([GG 7032](#)) and GN 27/2021 ([GG 7462](#)).

(1) All of the amendments prior to 2015 affect regulation 17(1), which is substituted by GN 20/2015. GN 20/2015 withdraws one of the previous amendments to that subregulation. None of the other amendments have been withdrawn or repealed even though they are now irrelevant.

(2) GN 310/2019 ([GG 7032](#)) states that the regulations were amended by Government Notice 19 of 13 February 2015. This reference is incorrect; it should refer to Government Notice 20 of 13 February 2015.

(3) GN 27/2021 ([GG 7462](#)) states that the regulations were amended by Government Notice 19 of 13 February 2015. This reference is incorrect; it should refer to Government Notice 20 of 13 February 2015. This notice also omits to mention Government Notice 310 of 31 October 2019.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on persons carrying on certain kinds of businesses.

Notices: GN 96/2006 ([GG 3658](#)), as amended by GN 295/2012 ([GG 5094](#)), identifies professions whose members are qualified to perform the duties of an accounting officer. GN 19/2015 ([GG 5668](#)) identifies professions whose members are qualified to perform the duties of an accounting officer; it withdraws GN 295/2012 but makes no mention of GN 96/2006.

A public notice containing a helpful explanatory note on the registration of close corporations was published in General Notice 67/2011 ([GG 4679](#)).

Notices on the registration and deregistration of specific close corporations are not recorded here.

Related laws: The Companies Amendment Act 3 of 1989 amended the *Companies Act 61 of 1973* to provide for the conversion of close corporations into companies and vice versa; this amending Act was repealed by the Companies Act 28 of 2004.

Cases:

Oshuunda CC v Blaauw & Another 2001 NR 230 (HC)

Doeseb & Others v Kheibeb & Others 2004 NR 81 (HC), 2006 (2) NR 702 (SC)
Bahlsen v Nederloff & Another 2006 (2) NR 416 (HC)
Norval & Others v Consolidated Sugar Investments (Namibia) (Pty) Ltd & Others 2007 (2) NR 689 (HC)
Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC)
Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (right of individual who is not a legal practitioner to represent a one-person close corporation in court as its “alter ego”)
De Villiers v Axiz Namibian (Pty) Ltd 2009 (1) NR 40 (HC), 2012 (1) NR (SC) (section 64(1))
S v Kapia & Others 2009 (1) NR 52 (HC) (formulation and particularity of charges of various offences under Act)
Nationwide Detectives and Professional Practitioners CC v Ondangwa Town Council 2009 (1) NR 308 (HC) (effect of deregistration under section 26)
Oberholster v Wolfaardt & Others 2010 (1) NR 293 (HC) (discussion of remedies under the Act which could have been utilised by respondents to resolve dispute brought to Court on another basis)
Marot & Others v Cotterell 2012 (1) NR 365 (HC) (purchase of shares in a close corporation does not give the members rights of occupation of immovable property owned by the close corporation by virtue of their membership but rather by agreement); confirmed in *Marot & Others v Cotterell* 2014 (2) NR 340 (SC)
Okorusu Flurospar (Pty) Ltd v Tanaka Trading CC & Another 2016 (2) NR 486 (HC) (section 64)
Wyss & Another v Hungamo & Others 2016 (4) NR 1054 (HC) (section 35 upheld against constitutional challenge); confirmed on appeal in *Wyss & Another NO v Hungama & Others* 2018 (2) NR 596 (SC) (section 35; discussion of general purpose and benefits of close corporations at paras 15-18)
Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (section 25)
Goike v Von Zelewski & Others 2017 (1) NR 260 (HC) (sections 36 and 49)
Zhao v Erf One Eight Five Three (CC/2007/0071) Klein Windhoek Property CC & One Other Case 2017 (2) NR 478 (HC) (sections 68 and 69)
Fischer v Seelenbinder & Another 2017 (4) NR 1214 (HC) (order under section 49 as well as common law); on the interpretation and implementation of this order, see *Fischer v Seelenbinder & Another* 2020 (2) NR 596 (SC) (dismissal of appeal against spoliation order) and *Fischer v Seelenbinder & Another* 2021 (1) NR 35 (SC) (“retirement” versus ceasing to be a member of a close corporation; sections 44(3) and 46(a)-(b) of the Act)
Leopard Tours Care and Camping Hire CC & Others v Dannecker 2017 (1) NR 50 (HC); *Dannecker v Leopard Tours Care and Camping Hire CC & Others* 2019 (1) NR 246 (SC) (section 63)
Woermann v Kawana & Others 2020 (3) NR 899 (HC) (sections 12, 29 44(1) and 49(1)).

Companies Act 28 of 2004

Summary: This Act ([GG 3362](#)) regulates companies comprehensively. It was brought into force on 1 November 2010 by GN 172/2010 ([GG 4536](#)).

Repeals: The Act repeals the *Companies Act 61 of 1973*, the *Registration and Incorporation of Companies in South West Africa Proclamation 234 of 1978*, and sections 31 and 32 of the Married Persons Equality Act 1 of 1996.

Amendments: Act 9/2007 ([GG 3969](#)), which was brought into force simultaneously with the Act on 1 November 2010 by GN 237/2010 ([GG 4595](#)), amends section 82.

The Act is also amended by the Business and Intellectual Property Authority Act 8 of 2016 ([GG 6105](#)), which was brought into force with effect from 16 January 2017 by GN 293/2016 ([GG 6197](#)).

The Abolition of Payment by Cheque Act 16 of 2022 ([GG 7995](#)), which was brought into force on 15 March 2023 by GN 47/2023 ([GG 8050](#)), amends sections 56, 173, 400, 421 and Schedule 1.

Act 4/2023 ([GG 8137](#)) amends sections 1 and 108, repeals section 107 and inserts section 122A.

Savings: Section 450 of the current Act states:

Regulations made under the repealed Act [*RSA Companies Act 61 of 1973*] relating to the winding-up and judicial management of companies, including former rules not repealed by regulation 26 of the Regulations in terms of section 15 of the repealed Act [*RSA Companies Act 61 of 1973*], for the Winding-up and Judicial Management of Companies, promulgated by GN No R.2490 of 28 December 1973 and which have in terms of section 16(1) of the repealed Act [*RSA Companies Act 61 of 1973*] been deemed to have been made under section 15 of that Act, as they exist immediately prior to the coming into operation of this section, must notwithstanding section 451 remain in force and are deemed to be regulations made under section 13 of this Act.

Section 442 (read with Schedule 5) of the repealed *RSA Companies Act 61 of 1973* ([RSA GG 3972](#)) repealed the *SA Companies Act 46 of 1926* ([SA GG 1562](#)). However, section 16 of the *RSA Companies Act 61 of 1973* states:

- (1) Any regulations or rules made under section 220 of the repealed Act [*SA Companies Act 46 of 1926*] shall be deemed to have been made under section 15 of this Act and shall remain in force until repealed by regulation.
- (2) The Third and the Fourth Schedules to the repealed Act [*SA Companies Act 46 of 1926*] shall, notwithstanding the repeal of that Act, remain in force and shall be deemed to be regulations made under section 15 of this Act until repealed by regulation.
- (3) Any proclamation issued under any law repealed by this Act and in force at the commencement of this Act shall remain in force until repealed by regulation.

Regulations: Companies Administrative Regulations, 2010 are contained in GN 173/2010 ([GG 4536](#)), as amended by GN 207/2016 ([GG 6113](#)) (which amends Annexure 3 by substituting Form CM 23), by GN 310/2017 ([GG 6482](#)) (which amends Regulation 40), by GN 311/2019 ([GG 7032](#)) (which substitutes Annexure 1) and by GN 294/2020 ([GG 7390](#)) (which substitutes Annexure 3, containing Forms CM 1 to CM 52).⁵⁰

The effect of the chain of savings provisions quoted above is that the following two sets of pre-independence regulations appear to survive:

(1) Regulations for the Winding-up and Judicial Management of Companies issued in terms of the *Companies Act 61 of 1973* and contained in GN R.2490/1973 ([RSA GG 4128](#)) remain in force, as amended by RSA GN R.1424/1980 ([RSA GG 7119](#)).

With respect to amendments to these regulations, note that section 23 of the *RSA Registration and Incorporation of Companies in South West Africa Proclamation 234 of 1978* ([RSA GG 6166](#)), dated **22 September 1978** (as amended by the *RSA Registration and Incorporation of Companies in South West Africa Amendment Proclamation 23 of 1979* published in [RSA GG 6294](#)), states in section 23 that “the provisions of sections 3(4), 4 and 4bis of the Executive Powers Transfer (General Provisions) Proclamation, 1977, of the Administrator-General, shall apply *mutatis mutandis* in relation to the Act as if this Proclamation were a Transfer Proclamation referred to in that Proclamation: Provided that in such application any reference in the said provisions to section 3(1) of that Proclamation shall be deemed to be deleted”. Section 3(4) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, provides that amendments to regulations made after the date of transfer in South Africa did not apply to SWA unless they explicitly stated this. All of the amendments to these regulations were after the date of transfer. However, one set of amendments to the regulations was made explicitly applicable to SWA: RSA GN R.1424/1980 ([RSA GG 7119](#)).

⁵⁰ Regulation 63 of these regulations contains the following repeals:

- (1) The **Companies Administrative Regulations, 1973**, promulgated under Government Notice R.1948 of 19 October 1973, as amended by Government Notices R.2384 of 14 December 1973, R.119 of 17 January 1975, R.1665 of 10 September 1976, R.1911 of 22 October 1976, R.787 of 7 May 1977, R.2044 of 7 October 1977, R.1390 and R.1391 of 30 June 1978 and Government Notice No. 13 of 12 February 1997.
- (2) The **Standing Advisory Committee Regulations, 1973**, promulgated by Government Notice R.1949 of 19 October 1973.

The regulations were further amended in South Africa prior to Namibian independence by RSA GN R.1682/1983 ([RSA GG 8828](#)) and RSA GN R.612/1989 ([RSA GG 11792](#)). However, neither of these amendments makes any mention of SWA.

(2) Regulations (“rules”) 16-23 of the Regulations for the Winding-up and Judicial Management of Companies, 1926, made under *SA Companies Act 46 of 1926* and contained in SA Government Notice 2270/1926 ([SA GG 1594](#)), remain in force.

SA Government Notice 1250/1939 ([SA GG 2668](#)), made in terms of section 220 of the *SA Companies Act 46 of 1926*, repealed regulation (“rule”) 50.⁵¹

Regulation 26 of the **Regulations for the Winding-up and Judicial Management of Companies, 1973**, made in terms of the *RSA Companies Act 61 of 1973* and contained in RSA GN R.1249/1973 ([RSA GG 4128](#)), repeals regulations (“rules”) 1 to 15 and 24 to 49:

REPEAL OF REGULATIONS

26. Rules 1 to 15 inclusive and rules 24 to 49 inclusive as published in Government Notice 2270 of 1926, as amended by Government Notices 1250 of 1939 and 239 of 1953, and the fourth and fifth tables of the Third Schedule and Forms N to Q inclusive of the Fourth Schedule to the Companies Act, 1926 (Act 40 of 1926), are hereby repealed.

Repealed regulations: Other repeals to the regulations issued under the Companies Act, 1926 were made by the **Companies Administrative Regulations, 1973**, made in terms of the *Companies Act 61 of 1973*, contained in RSA GN R.1948/1973 ([RSA GG 4055](#)) – and were applicable to Namibia until they were repealed by the **Companies Administrative Regulations, 2010** in GN 173/2010 ([GG 4536](#)) made in terms of the current Act; see regulation 37 read together with Schedule 3:

SCHEDULE 3

EXTENT OF REPEAL OF REGULATIONS, SCHEDULES TO REPEALED ACT AND PROCLAMATION

1. The whole of the First, Second and Third tables in the Third Schedule to the Companies Act, 1926, and Government Notices 1204 of 15 December 1961 and 848 of 5 June 1964.

2. The whole of the Forms A to M, inclusive, and Form R in the Fourth Schedule to the Companies Act, 1926, and Government Notices 1715 of 24 September 1926, 1749 of 28 September 1926, 2722 of 10 December 1926, 1268 of 25 August 1939, 1269 of 25 August 1939, 1051 of 30 June 1944, 2521 of 31 October 1952, 388 of 16 March 1962, 538 of 5 April 1962, 1286 of 10 August 1962, 847 of 5 June 1964, R.1855 of 11 October 1968 and R.32G8 of 1 October 1969.

3. The whole of Proclamation 157 of 17 July 1953.

4. The whole of the Registration Regulations promulgated by Government Notice 1712 of 24 September 1926 and Government Notices 1251 of 18 August 1939, 2522 of 31 October 1952/990 of 13 May 1955, 1959 of 30 November 1962 and R.1566 of 31 August 1973.

As noted above, although section 442 of the repealed *Companies Act 61 of 1973* ([RSA GG 3972](#)) repealed the *Companies Act 46 of 1926* ([SA GG 1562](#)), section 16(2) of the *Companies Act 61 of 1973* provided that the Third and the Fourth Schedules to the repealed *Companies Act 46 of 1926* remained in force and were deemed to be regulations made under section 15 of this Act until repealed by regulation. However, the **Third Schedule to the repealed Companies Act 46 of 1926** seems to have been entirely repealed.

Regulation 26 of the 1973 Regulations for the Winding-up and Judicial Management of Companies, issued under the *RSA Companies Act 61 of 1973* and contained in RSA GN R.1249/1973 ([RSA GG 4128](#)), repeals the Fourth and Fifth tables. Regulation 37 read together with Schedule 3 of the Companies Administrative Regulations, 2010, made under the current Companies Act 28 of 2004 and contained in GN 173/2010 ([GG 4536](#)), repeals the whole of the First, Second and Third tables in the Third Schedule.

The **Fourth Schedule to the repealed Companies Act 46 of 1926** also seems to have been entirely repealed.

⁵¹ SA Government Notice 1250/1939 ([SA GG 2668](#)) and SA Government Notice 239/1953 ([SA GG 4997](#)) contained other amendments, but these affect only regulations (“rules”) that were specifically repealed by regulation 26 of the **Regulations for the Winding-up and Judicial Management of Companies, 1973**. No other amendments were located.

Regulation 26 of the 1973 Regulations for the Winding-up and Judicial Management of Companies, issued under the *RSA Companies Act 61 of 1973* and contained in RSA GN R.1249/1973 ([RSA GG 4128](#)), repeals Forms N to Q. Regulation 37 read together with Schedule 3 of the Companies Administrative Regulations, 2010, made under the current Companies Act 28 of 2004 and contained in GN 173/2010 ([GG 4536](#)), repeals Forms A to M and Form R.

The net effect is that no parts of the Third and Fourth Schedules to the repealed *SA Companies Act 46 of 1926* which were deemed to be regulations by section 16 of the *RSA Companies Act 61 of 1973* remain in force.

Application of law: The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on persons carrying on certain kinds of businesses.

Notices: A public notice containing a helpful explanatory note on the new legal regime was published in General Notice 67/2011 ([GG 4679](#)).

A Companies Registration Office was declared in GN 60/2014 ([GG 5455](#)).

Notices on the registration, deregistration and dissolution of specific companies are not recorded here.

Notes: The **Corporate Governance Code for Namibia (NamCode)** can be found [here](#). This Code applies to “entities incorporated by statute or in terms of the Companies Act (2004) or registered in terms thereof and any other legislation applicable in Namibia”. It became applicable beginning with financial years that started after 1 January 2014. The NamCode is based on international best practices and on the *King Code on Governance for South Africa, 2009 (“King III”)*. Compliance with the NamCode is voluntary, but companies which are listed on the Namibian Stock Exchange are expected to apply the NamCode, or to explain the reasons for the areas where they are non-compliant (the “apply or explain” principle). The Board of Directors of the Namibian Stock Exchange has recommended (in the introduction to the publication containing the NamCode) that the NamCode should be applied to all Namibian entities regardless of their form of incorporation or establishment, including entities in the public, private and non-profit sectors, to achieve good governance.

Cases: The following cases were decided under the current Act –

Klein v Caremed Pharmaceuticals (Pty) Ltd 2015 (4) NR 1016 (HC) (section 349(f) read with 350(1)(c))

Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others 2013 (1) NR 157 (SC) (non-compliance with section 228 and its consequences)

Laicatti Trading Capital Inc & Others v Greencoal (Namibia) Pty (Ltd) & Another 2016 (2) NR 363 (HC) (section 349(h) and section 349(f) read with 350(1)(c))

Denker v Ameib Rhino Sanctuary (Pty) Ltd 2017 (4) NR 1173 (SC) (sections 122(1) and 140)

Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (1) 2018 (1) NR 175 (HC) (section 351(4)); *Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (2)* 2018 (1) NR 183 (HC) (application of section 350(1)(c) and (2) read with section 349(f); just and equitable winding up under section 349(h); provisional order for winding up); *Bank of Namibia v Small & Medium Enterprises Bank Ltd & Others (3)* 2018 (1) NR 193 (HC) (reconsideration and confirmation of previous ruling on compliance with section 351(4); final order for winding up); compliance with section 351(4) confirmed on appeal in *Bank of Zimbabwe Ltd & Another v Bank of Namibia* 2018 (4) NR 155 (SC), which also briefly discusses compliance with section 362(1)(b)

McLaren & Others NNO v Minister of Finance & Others 2018 (2) NR 509 (HC) (section 423(1): circumstances that justify invoking the commission of enquiry procedure set out in sections 423-424; applies only in involuntary winding up of a company unable to pay its debts), to obtain information from a director or officer of that company)

Van Zyl & Others v Namibian Affirmative Management and Business (Pty) Ltd & Others 2019 (1) NR 27 (HC) (section 260)

Miller & Others NNO v Prosperity Africa Holdings (Pty) Ltd 2019 (4) NR 905 (SC) (*locus standi* and powers of foreign-appointed liquidator)

Mbala & Others v One Body Apostolic Faith Church & Others 2020 (1) NR 44 (HC) (request for winding up under section 349(h) refused despite deadlock in leadership, in respect of religious organisation set up as section 21 association not for gain)

St John's Apostolic Faith Mission Church v Business and Intellectual Property Authority & Another 2020 (2) NR 528 (HC) (section 51(1) (meaning of "undesirable") and section 52(3))

Unistrat Property Development Five Seven Two Seven (Pty) Ltd v Chairperson of the Council for the Municipality of Windhoek & Others 2020 (2) NR 541 (HC) (section 42, which corresponds to section 35 of the previous Act, on ratification of pre-incorporation contracts after incorporation)

Kamushinda & Others v President of the Republic of Namibia & Others 2020 (4) NR 1058 (HC) (sections 37, 72, 110, 122 and 430)

Desert Fruit (Pty) Ltd v Olive Ridge (Pty) Ltd & Others NNO 2021 (2) NR 456 (HC) (section 260)

Transnamib Holdings Ltd v Stocks & Stocks Leisure (Namibia) (Pty) Ltd & Others 2021 (2) NR 497 (SC) (section 260(1) and (3))

Bruni & Others NNO v Minister of Finance & Others 2021 (2) NR 552 (SC) (sections 351(1)(f), 394, 423 and 424).

The following post-independence cases were decided under the previous *Companies Act 61 of 1973* –

Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC) (section 242(4))

Ex Parte Sudurhavid (Pty) Ltd: In Re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd 1992 NR 316 (HC)

Augusto v Sociada de Angolana de Comercio International Limitada (Sacilda) 1997 NR 213 (HC) (section 38(1))

Da Silva Augusto v Sociedade Angolana de Comercio Internacional Limitada 1999 (2) SA 788 (NmHC) (section 38(1))

Northbank Diamonds Ltd v FTK Holland BV & Others 2002 NR 284 (SC) (section 13)

Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC) (section 49(1)(b))

Cellphone Warehouse (Pty) Ltd v Mobile Telecommunications Ltd 2002 NR 318 (HC) (section 13)

Mahe Construction (Pty) Ltd v Seasonaire 2002 NR 398 (SC) (section 49(1)(b))

Gases & Others v The Social Security Commission & Others 2005 NR 325 (HC) (refusal of application to stay section 417 enquiry pending outcome of challenge to constitutionality of that provision)

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC) (proof of sanction and registration of offer of compromise)

Ex Parte Nednamibia Holdings Ltd 2007 (2) NR 446 (HC) (section 311)

Moder v Farm Audiwib (Neu Schwaren) (Pty) Ltd 2007 (2) NR 6 (SC) (section 73)

Norval & Others v Consolidated Sugar Investments (Namibia) (Pty) Ltd & Others 2007 (2) NR 689 (HC) (sections 20, 65(2) and Table B)

Absolut Corporate Services (Pty) Ltd v Tsumeb Municipal Council & Another 2008 (1) NR 372 (HC)(section 64; production of registration number insufficient proof of existence of company; best evidence is certificate of incorporation)

De Villiers v Axiz Namibian (Pty) Ltd 2009 (1) NR 40 (HC) (section 424 of this Act discussed in connection with interpretation of section 64(1) of Close Corporations Act 26 of 1988)

Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (appointment of joint liquidators; sections 367 and 381)

Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2) 2009 (1) NR 232 (HC); *Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others* 2013 (1) NR 157 (SC)(section 228)

Kaese v Schacht & Another 2010 (1) NR 199 (SC) (sections 266 and 286)

Weatherly International Plc v Bruni and McLaren NNO & Another 2014 (1) NR 273 (SC) (section 311)

Offshore Development Co (Pty) Ltd v First National Bank of Namibia Ltd 2014 (4) NR 1198 (HC) (powers of chief executive officer)

S v Kapia (CC 09/2008) [2018] NAHCMD 124 (11 May 2018) (elements and ambit of sections 424(1) and (3))

S v Kapia & Others 2018 (3) NR 885 (HC) (appropriate sentence for violation of section 424(3))

The following case contains a general discussion of the fiduciary duties of a company director, as a background to sentencing:

S v Kapia & Others 2018 (3) NR 885 (HC):

“The fiduciary duties of a director reflect a relationship of trust and loyalty between the director, the company, its members, and stakeholders. What is expected of a director is to act in good faith and always in the best interest of the company. Besides the statutory duties of a director as laid down in the Companies Act [28 of 2004], these duties overlap and inter-connect with common law duties to diligently operate with skill and care as a director, and must be adhered to at all times. In the context of this case it must be emphasised that, as a matter of principle, a director owes his or her fiduciary duties only to the company on whose board s/he serves and not to any other company or outsider. Directors must act within their powers and will personally be held accountable when exceeding the powers bestowed on them by the Act. Thus, it would be prudent for potential directors to subjectively assess their own abilities and ask themselves whether they are up to the task, before simply accepting directorship offered to them which, in the end, might cost them dearly. The accused persons before this court can attest to that.” (at para 3).

Commentary:

Eliaser Ilithilwa Nekwaya, “Defences against personal liability to diligent company directors in Namibia; Does it offer adequate protection?”, *Namibia Law Journal*, Volume 5, Issue 1, 2013 (discussing section 256)

Chisom Okafor, “The Revival of Small and Medium Enterprises in Namibia through an Effective Insolvency Law Regime” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available [here](#).

Business and Intellectual Property Authority Act 8 of 2016

Summary: This Act ([GG 6105](#)) establishes a Business and Intellectual Property Authority (BIPA), governed by a Board, which centralises the registration of business and intellectual property (industrial property and copyright) under the Close Corporations Act 26 of 1988, the Companies Act 28 of 2004, the Copyright and Neighbouring Rights Protection Act 6 of 1994 and the Industrial Property Act 1 of 2012. The Registrar of Business and Industrial Property, who is the CEO of BIPA, replaces the Registrar of Companies and the Registrar of Close Corporations as well as the Registrar of Industrial Property. It was brought into force with effect from 16 January 2017 by GN 293/2016 ([GG 6197](#)).

GG 6105 was replaced with a corrected copy, which has the same date. The replacement copy corrects a mistake in the Contents section on page 1 where the Act number was wrongly stated as 7 instead of 8. This second version of GG 6105 was then replaced with a third version, because of further unspecified errors on page 1. The correct *Gazette* is not otherwise indicated.

Regulations: Regulations are authorised by section 30 of the Act, but none have been issued as yet.

Notices: General Notice 640/2018 ([GG 6767](#)) announces the location and operating hours of the Registration Office of BIPA.

GN 146/2019 ([GG 6932](#)) transfers immovable property which is a State asset to BIPA, under section 31(1) of the Act, with the concurrence of the Minister responsible for finance.

Fees: Regulations relating to fees for acts and services by BIPA relating to copyright are contained in GN 309/2019 ([GG 7032](#)).

Appointments: Board members are announced in GN 252/2017 ([GG 6426](#)) and in GN 65/2022 ([GG 7758](#)).

Cases: *Minister of Industrialisation, Trade and SME Development & Others v Andima & Others* 2020 (1) NR 292 (HC) (discusses relationship between BIPA as established by this Act and the previous Business and Intellectual Property Authority, which was a section 21 company).

Commentary: Cislé S Jacobs, “The Intellectual Property Regime in Namibia: An Overview of the Legal, Institutional and Policy Framework” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available [here](#).

Public Private Partnership Act 4 of 2017

Summary: This Act ([GG 6357](#)) provides a legal framework for public private partnership projects and establishes the Public Private Partnership Committee. It was brought into force on 1 December 2018 by GN 335/2018 ([GG 6785](#)).

Regulations: Regulations are contained in GN 353/2018 ([GG 6796](#)).

Guidelines: Guidelines are authorised by section 40(2) of the Act. Guidelines for unsolicited proposals for public private partnership projects are contained in General Notice 151/2023 ([GG 8091](#)).

Notices: GN 336/2018 ([GG 6785](#)) provides a form for the disclosure of business and financial interests by nominees for membership on the Public Private Partnership Committee, in terms of section 8(2) of the Act.

Appointments: GN 336/2018 ([GG 6785](#)) announces the appointment of the Chairperson and members of the Public Private Partnership Committee. GN 108/2022 ([GG 7776](#)) announces the appointment of members of the Public Private Partnership Committee, for terms lasting until 30 November 2024.

Commentary: Helena Iifo-Walenga, “A critical appraisal of the Namibia Public-Private Partnership Act No 4 of 2017”, *Namibia Law Journal*, Volume 11, Issue 1, 2019.

Public Enterprises Governance Act 1 of 2019

Summary: This Act ([GG 6907](#)) makes provision for the efficient governance of State-owned enterprises, their restructuring and the monitoring of their performance. It was brought into force on 16 December 2019 by GN 390/2019 ([GG 7077](#)).

Repeals: The Act replaces the Public Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was originally named the State-owned Enterprises Governance Act 2 of 2006, and was amended by Act 5/2008 ([GG 4146](#)) and Act 8/2015 ([GG 5835](#)) (which changed its name). (There were also several amendments to Schedule 1 of the repealed Act, which are listed below.)

Savings: Section 42(3) of this Act provides that directives issued under the repealed law will be deemed to have been issued under this Act.

Section 42(4) of this Act provides that all public enterprises listed in Schedule 1 of the repealed Act are deemed to have been declared public enterprises under section 2 of this Act. Section 42(5)-(7) addresses which of those public enterprises will be deemed to be extra-budgetary funds, non-commercial public enterprises and commercial public enterprises.

Schedule 1 of the repealed Act was amended by section 134(2) of the Communications Act 8 of 2009 ([GG 4378](#)) and substituted pursuant to section 47 of the Act by GN 142/2013 ([GG 5213](#)), GN 43/2016 ([GG 5965](#)) and GN 222/2018 ([GG 6708](#)).

Section 42(8) states:

All provisions in laws that remain applicable as contemplated in section 48(1) of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006) in spite of their amendment by section 49 of that Act, will continue to be so applicable, until they are amended in a lawful manner.⁵²

Regulations: Regulations are authorised by section 38 of the Act, but none have yet been promulgated. There is no savings clause for regulations, but none were issued under the repealed Act.

Notices: Directives were issued under the repealed Act in relation to **remuneration for CEOs and Senior Managers and annual fees and sitting allowances for Board members** in GN 174/2010 ([GG 4538](#)), as amended by GN 141/2013 ([GG 5213](#)), GN 261/2014 ([GG 5644](#)) and GN 69/2018 ([GG 6572](#)). Table 1 of that Notice is substituted by GN 134/2011 ([GG 4767](#)) and GN 141/2013 ([GG 5213](#)). Tables 2 and 3 of that Notice are substituted by GN 261/2014 ([GG 5644](#)). Tables 1, 2 and 3 are all substituted by GN 69/2018 ([GG 6572](#)).

GN 69/2018 ([GG 6572](#)), which was issued under the repealed Act, also sets a **moratorium on any adjustment to the salaries and benefits of Chief Executive Officers, Senior Management Staff and Board Members of public enterprises** beyond the inflation adjustments specified in that notice, pending public enterprise reform in Namibia.

The Namibia Financial Institutions Supervisory Authority (NAMFISA) and the National Fishing Corporation of Namibia Limited (FISHCOR) were **exempted** from certain provisions of the repealed Act by GN 151/2011 ([GG 4787](#)).

Note that [GG 4787](#) erroneously uses the acronym FISCHOR.

Appointments: Appointments of the board members of specific public enterprises are listed under the statutes establishing those public enterprises.

Appointments with reference to the repealed Act: GN 232/2008 ([GG 4131](#)) issued under the repealed Public Enterprises Governance Act 2 of 2006 determines the number and terms of board members of the Namibia Airports Company, Namibia Ports Authority, Roads Authority, Roads Contractor Company and Transnamib Holdings Company. Members of the Boards of these enterprises are announced in GN 11/2009 ([GG 4210](#)). As noted above, the appointments of board members of public enterprises established by statute are generally listed under the statutes in question.

Cases: The following cases concern the Public Enterprises Governance Act 2 of 2006 –

Road Fund Administration v Government of the Republic of Namibia & Others 2012 (1) NR 28 (HC) (court takes *prima facie* view that Government and Cabinet are not entitled to interfere with executive decisions taken by board of parastatal)

⁵² Section 48(1) states: “Despite the amendment by section 49 of the laws specified in Schedule 2 to this Act and any other provision to the contrary of this Act, the provisions so amended of any such law, and the provisions of the constituent document or the memorandum of association and articles of association of any State-owned enterprise not established by statute which relate to the constitution of the board of the State-owned enterprise established by or under the law or to which such constituent document or such memorandum of association and article of association relate, the appointment of the members or alternate members, of such board, the term of office and conditions of office of such members, the filling of casual vacancies in the number of such appointed members or alternate members, the appointment of the chairperson and vice-chairperson of such board continue to be applicable until the date specified by the Minister under section 15(1).”

Section 49 amends 41 statutes that apply to specific public enterprises.

Transworld Cargo (Pty) Ltd v Air Namibia (Pty) Ltd 2014 (4) NR 932 (SC) (commercial decision of state-owned enterprise made in the ordinary course of business is not administrative action subject to administrative review)

Namibia Training Authority v Nangolo-Rukoro & Another 2016 (4) NR 992 (LC) (section 22(3))

Ngavetene & Others v Minister of Agriculture, Water and Forestry & Others 2019 (1) NR 129 (HC), partly upheld on appeal in *Minister of Agriculture, Water and Forestry & Others v Ngavetene & Others* 2021 (1) NR 201 (SC) (invalid appointment of temporary board in terms of section 6 discussed)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (statutory requirement of ministerial approval of remuneration and service benefits of management staff under section 22(3) cannot be ousted by agreement between the parties).

Commentary:

Frederico Links & Ellison Tjirera, “Nothing to Disclose: Critiquing Namibia’s passive approach to conflict of interest”, Institute for Public Policy Research, 2011, available [here](#)

Frederico Links & Malakia Haimbodi, “Governance Challenges in the SOE Sector”, Institute for Public Policy Research, 2011, available [here](#)

Dennis U Zaire, “Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place”, *Namibia Law Journal*, Volume 6, Issue 1, 2014.

May Weylandt, “SOE Governance in Namibia: Will a Hybrid System Work?”, Institute for Public Policy Research, 2016, available [here](#)

Ntelamo Ntelamo, *A Manual on the Public Enterprises Act*, Juta, 2021.

COMMISSIONS

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc. 3/2001, [GG 2499](#))
See also GN 51/2001 ([GG 2499](#)).

Commission of Enquiry into the Activities, Management and Operations of Air Namibia (Pty) Ltd (Proc. 18/2001, [GG 2616](#))
See also GN 194/2001 ([GG 2616](#)) and GN 230/2001 ([GG 2647](#)).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the Roads Authority (Proc. 21/2003, [GG 3031](#))
See also GN 172/2003 ([GG 3031](#)).

Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc. 38/2004, [GG 3221](#)).
See also GN 132/2004 ([GG 3221](#)).

INTERNATIONAL LAW

****Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), 1965**

SADC Declaration on Productivity, 1999 (not legally-binding)

See also **Electronic Transactions Act 4 of 2019 (EVIDENCE)** (electronic commerce).

See also **FINANCE AND DEVELOPMENT**.

See also Financial Intelligence Act 13 of 2012 (duties of Registrar of Companies and Close Corporations

to combat money-laundering and the financing of terrorism and proliferation) (**FINANCIAL INSTITUTIONS**).

See also **INTELLECTUAL PROPERTY**.

See also **LABOUR**.

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 (**MEDIA AND COMMUNICATION**).

See also **TRADE AND INDUSTRY**.