

COMPANIES

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* section 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](#)) deletes section 32(2).

Regulations: 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](#)) and GN 294/2012 ([GG 5094](#)), and substituted by GN 20/2015 ([GG 5668](#)) (which withdraws GN 294/2012).

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.

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.

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61 of 1973* to provide for the conversion of close corporations into companies and vice versa; this amending Act was repealed by the Companies Act 28 of 2004.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).

Companies Act 28 of 2004.

Summary: This Act ([GG 3362](#)) regulates companies comprehensively. It 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 ([GG 1316](#)). It came into force on 1 November 2010 (GN 172/2010, [GG 4536](#)).

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

Regulations: Regulations pertaining to the winding-up and judicial management of companies made under the previous act remain in force. These regulations are contained in GN R.2490 of 28 December 1973.

Companies Administrative Regulations, 2010 are contained in GN 173/2010 ([GG 4536](#)).

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.

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.

Cases: The following 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 Socieda de Angolana de Commercio International Limitada (Sacilda) 1997 NR 213 (HC) (section 38(1))

Da Silva Augusto v Sociedade Angolana de Commercio 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).

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 (section 256).

Public Enterprises Governance Act 2 of 2006.

Summary: This Act ([GG 3698](#)), which was originally named the State-owned Enterprises Governance Act, makes provision for the efficient governance of State-owned enterprises, their restructuring and the monitoring of their performance. It establishes the State-owned Enterprises Governance Council. The Act came into operation on 1 November 2006 (Proc. 13/2006, [GG 3733](#)). It was re-named by Act 8/2015 ([GG 5835](#)).

Amendments: Act 5/2008 ([GG 4146](#)) amends sections 15 and 27, substitutes section 48 and validates the appointment of certain board members. The changes to sections 15 and 48 are deemed to have come into operation at the same time as the principal Act, while the remainder of the amendments came into operation on the date the amending Act was gazetted (22 October 2008).

Schedule 1 of the Act is amended by section 134(2) of the Communications Act 8 of 2009 ([GG 4378](#)), brought into force in relevant part on 18 May 2011 (GN 64/2011, [GG 4714](#)). Schedule 1 is then substituted by GN 142/2013 ([GG 5213](#)), pursuant to section 47 of the Act.

The Act is substantially amended by Act 8/2015 ([GG 5835](#)), which changes the name of the Act from the State-owned Enterprises Governance Act to the Public Enterprises Governance Act. This amending Act amends “Schedule 2 to the principal Act and other laws” – presumably including those laws which were previously amended by Schedule 2 - to reflect the name change.

Application: This Act affects a number of companies other than those established or governed by specific statutes (Air Namibia (Pty) Ltd, National Petroleum Corporation of Namibia (Pty) Ltd, August 26 Holdings Company (Pty) Ltd, Windhoek Machinen Fabrik (Pty) Ltd, Namibia Bricks Enterprise (Pty) Ltd and Star Protection Services (Pty) Ltd) and one association not for gain (National Theatre of Namibia).

Notices: Directives in relation to **remuneration for CEOs and Senior Managers and annual fees and sitting allowances for Board members** are contained in GN 174/2010 ([GG 4538](#)), as amended by GN 141/2013 ([GG 5213](#)) and GN 261/2014 ([GG 5644](#)). 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 is substituted by GN 261/2014 ([GG 5644](#)).

A **memorandum of agreement between the Namibian Competition Commission and NAMFISA**, made pursuant to section 67(3) of the Competition Act 2 of 2003, is published in General Notice 270/2014 ([GG 5527](#)).

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

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

Appointments: GN 232/2008 ([GG 4131](#)) 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](#)). GN 131/2010 ([GG 4514](#)) announces the appointment of members of the Board of the Communications Regulatory Authority of Namibia.

Cases: *Road Fund Administration v Government of the Republic of Namibia & Others* 2012 (10 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).

Commentary:

Frederico Links & Ellison Tjirera, *Nothing to Disclose: Critiquing Namibia's passive approach to conflict of interest*, Institute for Public Policy Research, 2011, available at www.ippr.org.na; Frederico Links & Malakia Haimbodi, *Governing Challenges in the SOE Sector*, Institute for Public Policy Research, 2011, available at www.ippr.org.na.

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

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](#)).

See also Development Brigade Corporation Act 32 of 1992 (**LABOUR**).

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

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**)