

COMPANIES

Companies Act 61 of 1973, in part, as amended in South Africa to October 1978.

Summary: This Act regulates companies comprehensively. It is repealed by the Companies Act 28 of 2004, which was not in force as of 30 June 2010.

Applicability to SWA: Portions of the Act were made applicable to South West Africa by the *Registration and Incorporation of Companies in South West Africa Proclamation* (RSA Proclamation 234 of 22 September 1978), which came into operation on 1 October 1978. This Proclamation is based on the Act as amended up to the date of the Proclamation, and the Proclamation further amends the Act as it applies to South West Africa.

Further amendments applicable to SWA are added by the *Registration and Incorporation of Companies in South West Africa Proclamation* (RSA Proclamation 234 of 1978) and the *Registration and Incorporation of Companies in South West Africa Amendment Proclamation* (RSA Proclamation 23 of 1979).

Transfer of administration to SWA: Section 23 of RSA Proclamation 234 of 1978 states 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”. RSA Proclamation 234 of 1978 also makes certain amendments to the Act which had the effect of transferring the administration of the Act to SWA.

Amendments: As already noted, the Act has been amended by RSA Proclamation 234 of 22 September 1978, RSA Proclamation 234 of 1978, RSA Proclamation 23 of 1979.

Act 3/1989 inserts sections 29A, 29B, 29C and 29D to provide for the conversion of close corporations into companies and vice versa.

The Married Persons Equality Act 1 of 1996 amends sections 216 and 218.

Regulations: Companies Administrative Regulations are contained in RSA GN R.1948 of 19 October 1973, as amended by RSA GN R. 2384/1973 (14 December 1973), RSA GN R.119/1975 (17 January 1975), RSA GN R.1665/1976 (10 September 1976), RSA GN R.1911/1976 (22 October 1976), RSA GN R.787/1977 (6 May 1977), RSA GN R.2044/1977 (7 October 1977), RSA GN R.1391/1978 (30 June 1978) and GN 13/1997 (GG 1498).

Various companies are deemed to be companies incorporated in Namibia under Chapter IV of the Act. These have not been recorded here.

Directives on names of companies are contained in General Notice 17/1993 (GG 596).

Exemptions: The National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with

effect from 1 April 1999) affected the application of this Act to the National Transport Corporation.

Section 3 of the National Fishing Corporation of Namibia Act 28 of 1991 concerns the application of the Act to the National Fishing Corporation.

Section 26 of the National Housing Enterprise Act 5 of 1993 concerns the application of the Act to the National Housing Enterprise.

Section 27 of the National Development Corporation Act 18 of 1993 concerns the application of the Act to the National Development Corporation.

Sections 2 and 12 of the Namibia Wildlife Resorts Company Act 3 of 1998 affect the application of the Act to Namibia Wildlife Resorts Limited.

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on the Registrar of Companies and on persons carrying on certain kinds of businesses.

Cases:

- 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 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)(section 228).

Close Corporations Act 26 of 1988.

Summary: This Act provides for the establishment of close corporations. All sections of the Act came into force on 1 March 1994, *except for* section 5, 14 and 30 which came into force on 25 July 1994 (Act 8/1994; Proc. 9/1994, GG 820).

Amendments: The Act is substantially amended by Act 8/1994. The Married Persons Equality Act 1 of 1996 deletes section 32(2).

Regulations: Regulations are contained in GN 43/1994 (GG 829), which is amended by GN 97/2006 (GG 3658), and in GN 3/1994 (GG 863).

GN 96/2006 (GG 3658) identifies professions whose members are qualified to perform the duties of an accounting officer.

Related laws: The Companies Amendment Act 3 of 1989 amends the *Companies Act 61 of 1973* to provide for the conversion of close corporations into companies and vice versa.

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) (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).

Namibia Wildlife Resorts Company Act 3 of 1998.

Summary: This Act creates a company known as Namibia Wildlife Resorts Limited and provides for the transfer to this company of the state’s wildlife resorts enterprise (including the resorts in Etosha National Park, in other game parks and nature reserves and in any tourist recreation area). In terms of the Act, the state is the only shareholder of the company.

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 4 and 5.

Regulations: Title, rights and interests in certain immovable properties were transferred to the Namibia Wildlife Resorts Company by GN 161/2007 (GG 3900). This transfer includes land in a number of public parks: Gross Barmen, Popa Falls, Duwiseb, Hobas, Daan Viljoen, two erven at Lüderitz, Sesriem, Etosha (Namutoni, Halali and Okaukeujo), Torra Bay, Terrace Bay, Naukluft, Reho Spa and Khorixas Rest Camp.

Companies Act 28 of 2004.

Summary: This Act 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. It had not come into force as of 30 June 2010.

Amendments: Act 9/2007, which will come into force on a date set by the Minister, 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.

Application of law: The application of this law is affected by the Financial Intelligence Act 3 of 2007, which places certain duties on persons carrying on certain kinds of businesses.

State-owned Enterprises Governance Act 2 of 2006.

Summary: This 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 7 October 2006 (Proc. 13/2006, GG 3733).

Amendments: Act 5/2008 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.

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).

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).

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.21/2002, 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 (**COMMUNICATIONS**).