

# COMPANIES

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*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 It is repealed by the Companies Act 28 of 2004, which was not in force as of 31 December 2004.

**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).

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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 (now repealed) 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.

**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 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))

## **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) and GN 3/1994 (GG 863).

**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).

## **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.

## **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 operation as of 31 December 2004.

**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.

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

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