



Republic of Namibia
Annotated Statutes

Roads Contractor Company Act 14 of 1999

(GG 2208)

brought into force on 25 October 1999 by GN 236/1999 (GG 2220), with the exception of sections 5-9 and 11, which came into force on the transfer date, which is the date set in terms of section 10(1) for “transfer to the Company, with effect from a date determined by the Minister by notice in the *Gazette*, such assets, liabilities, rights or obligations of the State which relate to or are connected with the construction and maintenance of roads by the Department of Transport of the Ministry responsible for Transport, as may, in the opinion of the Minister, be required by the Company for the effective achievement of its objects” (section 14 of Act 14 of 1999);
this date was set as 1 April 2000 (GN 24/2003, GG 2922)

as amended by

Roads Contractor Company Amendment Act 11 of 2002 (GG 2868)

came into force on date of publication: 3 December 2002

State-owned Enterprises Governance Act 2 of 2006 (GG 3698)

brought into force on 1 November 2006 by Proc. 13/2006 (GG 3733);

amended and re-named as Public Enterprises Governance Act by Act 8 of 2015 (GG 5835);

repealed by Public Enterprises Governance Act 1 of 2019 (GG 6907)

ACT

To provide for the incorporation of a company to undertake the construction and maintenance of roads and other construction works; and to provide for matters incidental thereto.

[long title amended by Act 11 of 2002]

(Signed by the President on 30 September 1999)

ARRANGEMENT OF SECTIONS

Section

1. Definitions
2. Incorporation of Company
3. Shareholding in Company
4. Object of Company

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5. Powers and duties of Company
6. Appointment of chief executive officer
7. Performance agreement
8. Annual report
9. Power of Minister to demand information
[heading of section 9 amended by Act 2 of 2006 to delete the word "Shareholding"]
10. Transitional provisions
11. Issue of additional shares to State
12. Winding-up and judicial management
13. Disclosure of interest
14. Short title and commencement

[The ARRANGEMENT OF SECTIONS omits the text indicated in green above.
The missing text has been inserted here to match the section numbers and headings
in the text of the Act.]

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Definitions

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

“articles” means the articles of association of the Company;

“board” means the board of directors of the Company;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

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

“Company” means the company contemplated in section 2;

“construction works” includes, but is not limited to, buildings, bridges, waterworks, dams, reservoirs, tunnels, canals, aqueducts, irrigation works, harbours, aerodromes and railway infrastructure;

[definition of “construction works” inserted by Act 11 of 2002]

“memorandum” means the memorandum of association of the Company;

“Minister” means the Minister responsible for Transport;

[definition of “Shareholding Minister” deleted by Act 2 of 2006]

“transfer date” means the date determined by the Minister in terms of section 10(1).

Incorporation of Company

2. (1)

[subsection (1) deleted by Act 2 of 2006]

- (2)

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- (a)
- (b) the Company shall, subject to subsection (5), be deemed to comply with the provisions of the Companies Act relating to the membership of a public company.

[subsection (2), with the exception of paragraph (b), deleted by Act 2 of 2006]

(3) The Registrar of Companies defined in section 1 of the Companies Act shall, on receipt of the memorandum and articles referred to in subsection (2), register such memorandum and articles in accordance with the provisions of the Companies Act.

(4) The Company is exempt from the payment of all fees chargeable in terms of the Companies Act which relate to the checking of documents, the reservation and registration of the name of a company or a shortened form thereof, the registration of its memorandum and articles and the issue of a certificate to commence business.

(5) Sections 66, 174, 190 and 344(d) of the Companies Act shall not, while the State is a member of the Company and the total number of members of the Company is less than seven, apply to the Company.

(6) The Minister shall, within a period of 28 days after the registration of the memorandum and articles, or any alteration or addition thereto, as the case may be, table such memorandum and articles, or such alteration or addition, as the case may be, in the National Assembly if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within a period of 28 days after the commencement of its next ensuing ordinary session.

[subsection (6) amended by Act 2 of 2006 to delete the word "Shareholding"]

Shareholding in Company

3. (1) The State shall, on the registration of the Company and subject to subsection (5), be the holder of the shares in the Company.

(2) The Minister shall, on behalf of the State, exercise the rights attached to the shares of which the State is the holder.

[subsection (2) substituted by Act 2 of 2006]

(3)

[subsection (3) deleted by Act 2 of 2006]

(4)

[subsection (4) deleted by Act 2 of 2006]

(5) With the prior consent of the Cabinet -

(a) the Minister may alienate shares held by;

[paragraph (a) amended by Act 2 of 2006 to delete the word "Shareholding"]

(b) the Company may issue shares in the Company to any person other than, the State.

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Object of Company

4. (1) Subject to the other provisions of this Act, the object of the Company is to undertake work relating to the construction or maintenance of roads or any other construction works in accordance with sound and generally accepted business principles.

[subsection (1) substituted by Act 11 of 2002]

(2) The Company may, under section 55 of the Companies Act, make additions to or alter the provisions of its memorandum with regard to the object and powers of the Company, subject thereto that -

- (a) the Minister's prior written consent to such additions or alterations have been obtained, which consent shall, together with the special resolution referred to in that section, be lodged with the Registrar of Companies defined in section 1 of that Act; and

[paragraph (a) amended by Act 2 of 2006 to delete the word "Shareholding"]

- (b) the object mentioned in subsection (1) may not be altered.

Powers and duties of Company

5. (1) The Company may -

- (a) enter into an agreement with any person, body or authority to perform a particular act or render a particular service on behalf of or for the benefit of the Company;
- (b) obtain indemnity insurance to cover any liability which it may incur;
- (c) let or subcontract any facility or service it is required or entitled to provide or render,

consistent with the object of the Company.

(2) The Company shall -

- (a) utilise the proceeds of the sale of surplus assets to reduce the loan account of the State referred to in paragraph (b) or (c) of section 11(1), until such loan account is fully redeemed;
- (b) not without the consent of the Minister, alienate or in any way encumber any assets of the Company representing more than 10 per cent of the total market value of all the assets of the Company otherwise than in the normal course of business.

[paragraph (b) amended by Act 2 of 2006 to delete the word "Shareholding"]

Appointment of chief executive officer

6. (3) The board shall, after consultation with the Minister, appoint a chief executive officer for such period and, subject to section 22(3) of the Public Enterprises Governance Act, 2006, on such terms and conditions as the board may determine, to serve as the manager of the Company.

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[Subsection (1) is substituted by Act 2 of 2006, as amended by Act 8 of 2015.
The substituted section is incorrectly numbered as subsection (3).
The Public Enterprises Governance Act referred to is Act 2 of 2006, which
has been replaced by the Public Enterprises Governance Act 1 of 2019.]

(2) The chief executive officer appointed in terms of subsection (1) shall not be a director of the Company, and -

- (a) shall, at the invitation of the board, attend;
- (b) may participate in discussions at; and
- (c) shall not be entitled to vote at,

any meeting of the board.

Performance agreement

7. (1) The Company shall, subject to subsection (3), not later than two months before the commencement of every third financial year of the Company, and in accordance with such procedures as the Minister may in writing determine, submit to the Minister a draft performance agreement.

(2) The draft performance agreement contemplated in subsection (1) shall contain particulars of -

- (a) the expectations of the Government in respect of the Company's and every subsidiary company's scope of business, efficiency and financial performance;
- (b) the principles to be followed by the Company for the purposes of business planning;
- (c) the Company's dividend policy;
- (d) such measures as may, in the opinion of the Minister, be necessary to protect the financial soundness of the Company, including the Company's investment policy and a disclosure of particulars relating to the Company's indemnity insurance, the loans made or granted by the Company and the Company's cover against exchange rate risks;
- (e) the management and financial systems to be implemented by the Company and the principles to be applied in the budgeting for administrative expenditure;
- (f) the procedures to be followed by the Company in relation to -
 - (i) the calling for, evaluation and awarding of tenders; and
 - (ii) the entering into of agreements with any person, body or authority;
- (g) the measures by which the performance of the Company can be assessed, including the measures relating to the Company's -
 - (i) financial performance;
 - (ii) operational and service level performance; and

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(iii) management of human resources and promotion of sound labour relations; and

(h) any other matter relating to the performance of the Company's functions under this Act which the Minister may require.

(3) The first draft performance agreement contemplated in subsection (1) shall, notwithstanding that subsection, be submitted as provided for in that subsection within a period of two months after the transfer date, or before such later date as the Minister may by notice in the *Gazette* determine.

(4) The Minister shall, within a period of two months after the receipt of the draft performance agreement contemplated in subsection (1) -

(a) approve; or

(b) after consultation with the Company, amend and approve,

the draft agreement.

(5) Upon approval of the draft performance agreement by the Minister under subsection (4), the Minister and the chairperson of the board shall sign the agreement.

(6) The Minister and the Company may, subject to subsection (7), at any time after signature of a performance agreement, amend such agreement.

(7) An amendment to the performance agreement in accordance with subsection (6) shall be in writing and shall be signed by the Minister and by the chairperson of the board.

[section 7 amended by Act 2 of 2006 to delete the word "Shareholding" throughout]

Annual report

8. (1) The Company shall, in addition to any record, statement or report required in terms of Chapter XI of the Companies Act, and within a period of six months after the end of each financial year of the Company, submit to the Minister a report on the activities of the Company during that financial year, which annual report shall include -

(a) the audited and approved financial statements contemplated in that Chapter in respect of all the business of the Company, including a balance sheet and an income and cash flow statement; and

(b) a report on -

(i) the Company's performance in relation to the Company's performance agreement contemplated in section 7; and

(ii) such other matters as the Minister may in writing require.

(2) The Minister shall, within a period of 28 days after the receipt of the annual report referred to in subsection (1), table such report, together with the relevant performance agreement contemplated in section 7, including any amendment made to such agreement, in the National Assembly, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within a period of 28 days after the commencement of its next ordinary session.

[section 8 amended by Act 2 of 2006 to delete the word "Shareholding" throughout]

Power of Minister to demand information

9. Notwithstanding any other law, the Minister may at any time by notice in writing require the Company to furnish him or her with such information relating to the affairs of the Company as he or she may reasonably require for the purpose of the performance of his or her functions in terms of this Act, and which information so required he or she specifies in such notice.

[section 9 amended by Act 2 of 2006 to delete the word "Shareholding" throughout]

Transitional provisions

10. (1) Subject to the further provisions of this section and section 11, the Minister shall, after consultation with the Minister responsible for Finance and on such conditions as the Minister may determine, transfer to the Company, with effect from a date determined by the Minister by notice in the *Gazette*, such assets, liabilities, rights or obligations of the State which relate to or are connected with the construction and maintenance of roads by the Department of Transport of the Ministry responsible for Transport, as may, in the opinion of the Minister, be required by the Company for the effective achievement of its objects: Provided that such assets, liabilities, rights or obligations shall be specified in such notice, including the value of each item so specified as determined in terms of subsection (8).

[subsection (1) amended by Act 2 of 2006]

(2) Notwithstanding any other law, the Company shall, with effect from the transfer date, be vested with the ownership of the assets and rights and be charged with the liabilities and obligations transferred or assigned to it by virtue of subsection (1).

(3) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to the Company in terms of subsection (1), shall be sufficient proof that the asset or right so described vests in the Company.

(4) Upon the submission of a certificate referred to in subsection (3) to the Registrar of Deeds appointed in terms of section 2 of the Deeds Registry Act, 1937 (Act No. 47 of 1937), or to any other person in charge of any other office where a register or record of the ownership of or entitlement to an asset or right described in such certificate is being kept, the Registrar or such person, as the case may be, shall make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer contemplated in that subsection in the name of the Company.

[The Deeds Registries Act 47 of 1937 has been replaced by the Deeds Registries Act 14 of 2015.]

(5) Notwithstanding any other law or the common law, no servitude or other right of any kind in respect of State land transferred to the Company in terms of subsection (1) shall be acquired by prescription.

(6) The Company shall be substituted for the State as a contracting party in respect of any agreement transferred to the Company in terms of subsection (1), without such substitution bringing about a novation of such agreement.

(7) Any litigation, including arbitration proceedings, in respect of which the cause of action arose before the transfer date and to which any State authority is a party by virtue of its

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undertaking of roads construction or maintenance work, shall be conducted by or against the State, as the case may be.

(8) The value and the net asset value of the assets, liabilities, rights and obligations transferred in terms of subsection (1) shall be determined by the Minister with the concurrence of the Minister responsible for Finance.

(9) For the purposes of the Income Tax Act, 1981 (Act No. 24 of 1981), or of any other law in terms of which a tax or levy may be imposed, it shall be deemed that -

- (a) expenses were actually incurred by the Company in acquiring the assets, liabilities, rights and obligations transferred to it in terms of subsection (1); and
- (b) notwithstanding any other law, the expenses referred to in paragraph (a), including the cost of the assets, are equal to the value determined in terms of subsection (8).

(10) Notwithstanding any other law, no additional sales levy, sales tax, stamp duty, transfer duty, or any other levy, tax or duty, or registration fee payable in terms of any law relating to the acquisition or transfer of assets or rights shall be payable in respect of the transfer of assets or rights by the State to the Company in terms of subsection (1).

(11) Notwithstanding any other law, the Minister may, on or before the transfer date, in consultation with the Prime Minister and in accordance with an agreement concluded with the Company, transfer to the Company any staff member in the Public Service as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995), but subject to such member's consent.

(12) Notwithstanding section 13(2) or any other law, the Minister may, with the concurrence of the Minister responsible for Finance, during the period between the commencement of this section and the transfer date take such steps or authorise such thing to be done, or perform any function or authorise the Company to perform any function in terms of this Act, as may be necessary to promote -

- (a) the transfer to the Company of the assets, liabilities, rights or obligations mentioned in subsection (1);
- (b) the undertaking of roads construction and maintenance work on a commercial basis;
- (c) the management of the Company.

[subsection (12) amended by Act 2 of 2006]

Issue of additional shares to State

11. (1) The Company shall as consideration for the transfer to the Company of the assets, liabilities, rights and obligations in terms of section 10(1), to the value referred to in section 10(8), or for the provision of working capital, either -

- (a) issue to the State additional fully paid-up shares; or
- (b) create a loan account in favour of the State; or
- (c) issue such shares and create such loan account,

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to the value determined by the Minister in consultation with the Minister responsible for Finance and the Company, and such value shall be deemed to be reasonable consideration for such shares or working capital.

- (2) The Company is exempt from the payment -
 - (a) of any stamp duty in respect of shares issued to the State;
 - (b) of any moneys in terms of section 75 of the Companies Act in respect of the creation of, or increase in, the share capital of the Company, while the State is the sole shareholder of the shares of the Company.

Winding-up and judicial management

12. The Company shall not be wound up or placed under judicial management except under the authority of an Act of Parliament.

Disclosure of interest

13. (1) A director of the Company who has a direct or indirect interest in any agreement entered into or to be entered into by the Company, or in any matter which is in conflict with, or is likely to be in conflict with, the interests or objects of the Company, shall as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature, extent and full particulars of his or her interest at a meeting of the board, in accordance with the procedure provided in sections 234 and 241 of the Companies Act.

(2) Full particulars of the disclosure made at a meeting in terms of subsection (1) shall be recorded in the minutes of such meeting.

(3) A director of the Company who contravenes or fails to comply with any provision of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) If a person referred to in subsection (3) is in terms of that subsection convicted of an offence, or is convicted of an offence, or is convicted of an offence in terms of any provision of the Companies Act, the Court convicting such person shall summarily inquire into, and determine the monetary value of, any advantage or potential advantage which such person has or could have gained in consequence of such offence or from any agreement referred to in subsection (1) or as a result of any agreement entered into by the Company relating to any matter referred to in subsection (1).

(5) Any person referred to in subsection (4) shall on conviction, and in addition to any fine or imprisonment imposed in terms of subsection (3) or of section 441 of the Companies Act, as the case may be, be liable to a fine not exceeding three times the value of the advantage or potential advantage determined in terms of subsection (4), or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

[The word "potential" is misspelt in the Government Gazette, as reproduced above.]

(6) Notwithstanding any provision of section 92 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a magistrate's court may impose the penalties prescribed by subsections (3) and (5).

- (7) For the purposes of this section -

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- (a) an interest of a director of the Company includes an interest of such director's spouse, parent, child or business partner; and
- (b) a reference to a director of the Company includes a reference to the chief executive officer appointed in terms of section 6 and an alternate director of the Company.

Short title and commencement

14. (1) This Act shall be called the Roads Contractor Company Act, 1999, and shall, subject to subsection (2), come into operation on a date to be determined by the Minister by notice in the *Gazette*.

- (2) Sections 5 to 9 and 11 shall come into operation on the transfer date.