

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](#)) 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](#)).

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](#)), 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 None of the other amendments have been withdrawn or repealed even though they are now irrelevant.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.

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); 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)

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).

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 was brought into force on 1 November 2010 by GN 172/2010 ([GG 4536](#)).

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](#)).

Regulations: Pre-independence regulations have not been comprehensively researched.

Regulations pertaining to the winding-up and judicial management of companies made in terms of section 15 of the previous *Companies Act 61 of 1973* remain in force in terms of section 450 of this Act. These regulations are contained in RSA GN R.2490/1973 (RSA GG 4128).

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).

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 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)).

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 Socieda de Angolana de Comercio Internacional 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).

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 at <https://namiblii.org/system/files/other/lrdc-25-years/lrdc-25-years.pdf>.

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.

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

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.

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

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 at <https://namiblii.org/system/files/other/lrdc-25-years/lrdc-25-years.pdf>.

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 and guidelines are authorised by section 40 of the Act. Regulations are contained in GN 353/2018 ([GG 6796](#)).

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.

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 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.) The Act was brought into force on 16 December 2019 by GN 390/2019 ([GG 7077](#)).

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. There is no savings clause for regulations, but none were issued under the repealed 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.”

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 with reference to the repealed Act: 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:

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)

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 not administrative action subject to administrative review)

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

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”, *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 at www.ippr.org.na.

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.**