



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 209

2023

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 4 of 2023: Companies Amendment Act, 2023.

Act No. 4, 2023

COMPANIES AMENDMENT ACT, 2023

EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing provisions.
- [] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Companies Act, 2004 so as to insert new definitions; to repeal certain provisions authorising public companies with share capital to issue warrants entitling bearers of share capital to shares or stock specified in the warrants, to require bearers of share warrants to convert the share warrants into ordinary par value shares; to require companies to keep and maintain registers of beneficial owners; and to provide for incidental matters.

(Signed by the President on 19 July 2023)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 28 of 2004 as amended by section 32 of Act No. 8 of 2016

1. Section 1 of the Companies Act, 2004 (Act No. 28 of 2004) (hereinafter referred to as the “principal Act”) is amended by –

- (a) the insertion after the definition of “auditor” of the following definition:

““beneficial owner” means a beneficial owner as defined in section 1 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);”;

- (b) the insertion after the definition of “books or papers” and “books and papers” of the following definition:

““Centre” means the Financial Intelligence Centre as defined in section 1 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);”;

- (c) the insertion after the definition of “company” of the following definition:

““competent authority” means a competent authority as defined in section 1 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);”.

Repeal of section 107 of Act No. 28 of 2004

2. Section 107 of the principal Act is repealed.

Act No. 4, 2023**COMPANIES AMENDMENT ACT, 2023****Amendment of section 108 of Act No. 28 of 2004**

3. Section 108 of the principal Act is amended by the addition after subsection (3) of the following subsections:

“(4) Where a company has issued a share warrant to a bearer before the commencement of this provision, the bearer of such share warrant must, within 30 days from the date of commencement of this provision, convert the share warrant into an ordinary par value share.

(5) A bearer of a share warrant who fails to comply with subsection (4) commits an offence and is liable to a fine which does not exceed N\$40 for every day during which the contravention continues.”.

Insertion of section 122A in Act No. 28 of 2004

4. The principal Act is amended by the insertion after section 122 of the following section:

“Register of beneficial owners

122A. (1) Every company, at its incorporation and thereafter, must keep and maintain an accurate and up-to-date register of the beneficial owners of the company and the register must be kept in Namibia at the same office at which the register of members is kept.

(2) Every company must record in the register referred to in subsection (1) the following information:

- (a) in respect of each beneficial owner of the company –
 - (i) the first name and surname and any former first name and surname of the beneficial owner;
 - (ii) the date of birth and identification number appearing on the identity document of the beneficial owner;
 - (iii) full particulars of residential address, business address, email address and postal address of the beneficial owner;
 - (iv) contact details of the beneficial owner;
 - (v) the nationality of the beneficial owner; and
 - (vi) the nature and extent of the beneficial ownership; and
- (b) in respect of a director or shareholder of the company who is a nominee of a beneficial owner, information referred to in paragraph (a).

Act No. 4, 2023**COMPANIES AMENDMENT ACT, 2023**

(3) Every company must, on a prescribed form, file with the Registrar accurate and up-to-date information of the beneficial owner recorded in terms of subsection (2), and where the information has changed the company must within seven days of such changes file with the Registrar the changes to the information.

(4) A company or the Registrar, upon request by a competent authority, must make available the information of the beneficial owner held and maintained by the company or filed with the Registrar in terms of subsection (2).

(5) A company must appoint a person residing in Namibia who is –

- (a) responsible for the safe keeping of the register of the beneficial owners; and
- (b) authorised by the company to make the information of the beneficial owner recorded in terms of subsection (2) available to a competent authority under subsection (4).

(6) The information of the beneficial owner and other information regarding a company held by the Registrar are public information and upon request must be made available by the Registrar for inspection by a member of the public, whether electronically or physically, but the information of the beneficial owner is limited to the full name of the beneficial owner and the nature and extent of beneficial ownership.

(7) Notwithstanding any other law to the contrary, the Registrar on his or her own, the Centre on its own or the Registrar or the Centre on behalf of a competent authority may –

- (a) request information of the beneficial owner or any other information regarding a company from; or
- (b) provide the information referred to in paragraph (a) to,

an authority in a foreign state that has similar powers and duties as those of the Registrar or the Centre for the purposes of an investigation of money laundering or financing of terrorism or proliferation activities.

(8) The Registrar, the Centre or a competent authority that requested or provided information of the beneficial owner or other information regarding a company under subsection (7) must keep record of the information provided or requested.

(9) A company must keep and maintain records of the information of the beneficial owner of the company and the nature and extent of the beneficial ownership for a period of at least five years after the date on which the record was made.

(10) The administrator or liquidator of a company under dissolution and any other person involved in the dissolution of a company must keep and maintain records of the information of the beneficial owner of the company and the nature and extent of the beneficial ownership for a period of at least five years after the date on which the company is dissolved or otherwise ceases to exist.

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(11) If the Registrar has reasonable grounds to believe that a company or a person –

- (a) has failed or fails to keep and maintain a register of beneficial owners referred to in subsection (1); or
- (b) has failed or fails to comply with any time period referred to in subsection (3), (9) or (10),

the Registrar must in writing issue a directive to the company instructing the company to comply with subsection (1), (3), (9) or (10) within a period of seven days from the date of receiving the directive.

(12) If a company or person refuses or fails to comply with a directive issued under subsection (11), the Registrar may impose the administrative penalties set out in subsection (14).

(13) In determining an appropriate administrative penalty, the Registrar must consider the following factors –

- (a) the nature, duration, seriousness and extent of the relevant non-compliance;
- (b) whether the company or person has previously failed to comply with this section; and
- (c) any remedial steps taken by the company or person to prevent a recurrence of the non-compliance.

(14) After considering the factors referred to in subsection (13), the Registrar may impose any of the following administrative penalties on the company or person –

- (a) if the company or person has failed to keep and maintain a register in terms of subsection (1) or has failed to comply with the time period referred to in subsection (3), (9) or (10), a financial penalty not exceeding N\$50 000; and
- (b) if the company or person after receiving a directive referred in subsection (11) fails to comply with the directive, in addition to the penalty imposed under paragraph (a), a financial penalty which does not exceed N\$1 000 for every day during which the contravention continues.

(15) The Registrar must list a company that fails to comply with subsection (1), (3), (9) or (10) on an inactive list and thereafter deregister the company after six months from the date the company was listed.

(16) On imposing the administrative penalties under subsection (14), the Registrar must in writing notify the company or person –

- (a) of the decision and the reasons for the decision; and
- (b) of the amount payable as a penalty and any interest that may become payable and the interest rate, and the period within which the penalty must be paid.

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(17) Any financial penalty imposed under subsection (14) must be paid to the Registrar.

(18) A company or a person who –

- (a) contravenes or fails to comply with subsection (1), (2), (3), (4), (9) or (10);
- (b) knowingly provides false or misleading information of the beneficial owner or the nature and extent of the beneficial ownership;
- (c) knowingly withholds information of the beneficial owner that must be entered into the register referred to in subsection (1); or
- (d) knowingly makes a false entry into the register referred to in subsection (1),

commits an offence and is liable on conviction to a fine not exceeding N\$10 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

(19) The Registrar may impose an administrative penalty under this Act irrespective of any criminal liability or penalty to which the company or a person may be subjected to, but where the company or a person has been sentenced to a fine following a conviction for an offence, the Registrar must take the fine imposed into account when assessing an administrative penalty payable under this section.”.

Short title

5. This Act is called the Companies Amendment Act, 2023.
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