

Corporate Laws Bill of 2025 Summary

Overall Purpose and Scope

The Bill is introduced to reform company law in Namibia, restate the greater part of the enactments relating to companies, and address other forms of business organisation.

Key features include:

- Reforming laws regarding directors' standards of conduct and liability, business names, auditors, and audit committees.
- Modernising and re-enacting the **Close Corporations Act, 1988** as a new **Schedule 2** of this Act, introducing the concept of **Closely Held Companies (CHCs)**.
- The Act is called the **Corporate Laws Act, 2025**.

CHAPTER 1: Regulatory Framework

This chapter establishes the administrative and judicial bodies responsible for the Act's implementation:

- **Part 1: General Provisions**
 - Sets out definitions, the purpose of the Act, and provisions on the general/restricted application of the Act.
 - Establishes the Registration Office and Register and defines the roles and delegation powers of the Registrar.
- **Part 2: Business and Intellectual Property Authority (BIPA)**
 - Outlines the objectives and functions of BIPA, including its role in reporting, research, and public relations.
 - Gives the Minister power to direct BIPA policy and require investigations.
- **Part 4 & 5: Enforcement and Adjudication**
 - Details BIPA's enforcement powers and the process for appeal or review of its decisions.
 - Establishes the **Companies Tribunal**, outlining the appointment, functions, and qualifications of its members, to deal with various company law matters.

- Establishes an **Ad hoc Panel of Experts for Takeovers** to regulate affected transactions.

CHAPTER 2: Company Types and Conversions

This chapter addresses the structure and flexibility of business entities:

- **Categories of Companies:** Recognizes categories including state-owned companies, non-profit companies, and personal liability companies, providing modified application rules for each.
- **State-Owned Companies:** Allows for a **duality of corporate purpose** for state-owned companies, authorising them to pursue both economic and social objectives.
- **Conversions:** Details procedures for converting between public, private, and non-profit company types.
- **Closely Held Companies (CHCs):** Provides specific provisions for the conversion of companies into CHCs and vice versa.
- **Associations for Gain:** Lifts the previous legal restriction or prohibition on forming associations or partnerships exceeding 20 members.

CHAPTER 3: Formation, Capacity, and Registration

This chapter covers the legal steps for creating a company:

- **Capacity and Powers:** Defines the capacity, purposes, and powers of companies and sets limits on capacity for "ring-fenced" companies.
- **Legal Personality:** Introduces a provision for **liability for unconscionable abuse of separate legal personality** (piercing the corporate veil).
- **Names:** Provides rules for name desirability, reservation, change, and recourse to the Companies Tribunal for name disputes.

- **Constitutional Documents:** Sets out the requirements for the **Memorandum of Association** (Parts 3 and 4) and the **Articles of Association** (Part 5), including forms provided in Schedule 1.

CHAPTER 4: Corporate Finance & Securities

This chapter regulates a company's financial structure and ownership:

- **Capitalisation:** Covers the authorisation, issuing, and consideration for shares.
- **Financial Assistance:** Regulates financial assistance for the subscription of securities and, separately, loans and financial assistance to directors.
- **Distributions:** Requires that all distributions to shareholders (e.g., dividends) be authorised by the board and must comply with an **equity solvency test**.
- **Securities:** Details the registration and transfer rules for both certificated and uncertificated securities.
- **Beneficial Ownership:** Mandates a **Register of beneficial owners**.
- **Debt Securities:** Covers the creation, issue, and registration of debt securities and bonds, as well as the rights and liabilities of debt security holders and trustees.
- **Winding-Up and Deregistration:** Provides procedures for the voluntary and court-ordered winding-up of solvent companies. Assets remaining in a company upon removal from the register pass to the state.

CHAPTER 5: Public Offering of Securities

This chapter governs the offering of shares or debt instruments to the public:

- **Prospectus Requirements:** Imposes general restrictions on public offers and sets comprehensive requirements for the content and use of a prospectus.
- **Liability:** Details the civil and criminal liability for **untrue statements** in a prospectus, applying to the company, directors, and experts.

- **Allotments:** Imposes time limits and restrictions on the allotment and acceptance of securities.

CHAPTER 6: Corporate Governance

This chapter sets out the rules for the management and oversight of companies:

- **Shareholder Rights:** Details the rights of shareholders to be represented by proxies, rules for shareholder meetings, quorums, and resolutions.
- **Directors:** Governs the election, ineligibility, disqualification, removal, and vacancies of directors.
- **Standards of Conduct:** Sets out the **standards of conduct for directors**, rules regarding directors' **personal financial interests**, and their liability for contravention of their duties.
- **Indemnification:** Allows for the indemnification and insurance of directors.

CHAPTER 7: Remedies and Investigations

This chapter provides mechanisms for dispute resolution, redress, and oversight:

- **Oppression:** Allows members to seek **relief from oppressive or prejudicial conduct** or abuse of separate juristic personality.
- **Investigations:** Gives BIPA (via the Registrar) and inspectors wide powers to investigate the financial affairs, ownership, and control of a company.
- **Derivative Action:** Introduces the right for a shareholder to initiate legal proceedings **on behalf of the company** (a derivative action).

- **Dissenting Shareholders' Appraisal Rights:** Provides a mechanism for dissenting shareholders to demand that the company pay them the **fair value** of their shares following certain fundamental corporate actions (trigger events), with the Companies Tribunal determining fair value if an agreement is not reached.
- **Dispute Resolution:** Encourages the voluntary resolution of disputes through alternative dispute resolution processes.

CHAPTER 8: Accountability & Transparency

This chapter focuses on financial reporting and corporate oversight:

- **Records:** Sets standards for the form, location, and access to company records, including the retention of accounting records for the current and previous seven financial years.
- **Financial Statements:** Defines requirements for annual and group financial statements and prohibits the issue of incomplete financial statements, imposing penalties for non-compliance.
- **Disclosure:** Requires disclosure of loans and security provided to or for the benefit of directors and managers.
- **Auditors and Audit Committees:** Requires the appointment and rotation of auditors, the registration and duties of company secretaries, and the establishment and duties of **audit committees**.

CHAPTER 9: Fundamental Transactions, Takeovers & Offers

This chapter regulates significant changes to a company's structure or ownership:

- **Fundamental Transactions:** Covers the approval requirements and implementation processes for disposal of the greater part of assets/undertaking, amalgamation and merger, and schemes of arrangement.

- **Takeovers:** Provides for the regulation of **affected transactions** by the *ad-hoc Panel of Experts*.
- **Mandatory Offers and Squeeze-Out:** Includes provisions for mandatory offers, compulsory acquisitions (**squeeze out**), and restrictions on "frustrating actions" by the target company's board.

CHAPTER 11: Business Rescue

This chapter introduces a formal framework for the restructuring of financially distressed companies:

- **Initiation:** Business rescue proceedings can be initiated by a company resolution or BIPA directive.
- **Moratorium:** The process imposes a **general moratorium on legal proceedings** against the company.
- **Practitioner:** Provides for the appointment, qualifications, powers, and duties of a Business Rescue Practitioner.
- **Finance:** Establishes the **Business Rescue Fund** to provide post-commencement finance.
- **Plan:** Details the process for proposing, considering, and adopting a **Business Rescue Plan** by affected persons (creditors, employees, security holders).

CHAPTER 12: Market Abuse

This chapter introduces a framework to regulate prohibited market practices:

- **Insider Trading:** Prohibits and penalises insider trading.
- **Prohibited Practices:** Addresses prohibited trading practices and the publication of false, misleading, or deceptive statements.

- **Enforcement:** Details the powers of the **Financial Intelligence Centre** and the **Enforcement Committee** to investigate and sanction market abuse.

CHAPTER 13: Control of Political Donations

This chapter introduces strict controls over corporate political funding:

- **Authorisation:** Requires all political donations or political expenditure to be authorised by a special resolution of the company.
- **Remedies:** Provides remedies for unauthorised donations, including the liability of directors and enforcement through shareholder action.
- **Exemptions:** Exempts small donations (not exceeding NAD\$115,000 in any twelve-month period), as well as payments to trade unions or for trade association memberships.

SCHEDULES (Key Components)

The Bill includes several Schedules that form an integral part of the Act:

- **Schedule 1:** Provides standard forms of Articles of Association for Public, Private, and Not for Profit Companies.
- **Schedule 2 (Closely Held Companies - CHCs):** This is the re-enactment of the former Close Corporations Act. It defines the CHC as a juristic person with a maximum of **10 shareholders** and sets out rules for their formation, internal relations, liability of shareholders, accounting, and winding-up.
- **Schedule 5:** Contains the consequential amendments, including the **repeal of the Close Corporations Act, 1988**.
- **Schedule 7:** Outlines the detailed transitional arrangements for existing companies and the introduction of new company law concepts.



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