

HOW TO REGISTER A BUSINESS IN NAMIBIA

Companies and Patents Registration Office



A Directorate of the Ministry of Trade and Industry

FOREWORD

This booklet explores the ways how the choice of business entity may be important to you as a business person. This guide is designed to be your introduction to companies and close corporation registration procedures and requirements.

The mission of the division of the Registration of Companies and Close Corporation in the Ministry of Trade and Industry is to manage, regulate and facilitate the formation of business entities and to encourage investment through an appropriate legal framework and conducive environment that ensures the flourishing of businesses.

One of the most important decision to be taken by anyone, who wishes to launch a business enterprise, is the choice of business form. In modern-day Namibia there are various important business forms, namely sole proprietorship, partnerships, companies and close corporations.

It is not, however, a comprehensive text nor a substitution to the Companies Act and Close Corporation Act. Nor is it a substitute for the professional advice you may need from legal practitioners, auditors, accounting officers or secretarial firms to assist you in the registration of your business.

An entrepreneur in Namibia can choose from a variety of business forms to conduct its business. The following is a short description of the different forms available.

THE INCORPORATION OF A COMPANY

What is the difference between a public and private company?

Public:

- Shares are offered to the public.
- There is no limitation on maximum shareholders, but there is a minimum of seven subscribers at incorporation of company.
- There is no limit on the transfer of its shares.
- The word “Limited” will appear at the end of the companies’ name.
- They must make certain information known to the public.
- This type of business is normally very capital intensive.
- There is a minimum of two directors.

Private:

- Shares are not offered to the public.
- There is a maximum of 50 and a minimum of one shareholder.
- There are some restrictions on the transfer of shares.
- The words “(Proprietary) Limited” or “(Pty) Ltd” will appear at the end of the company’s name.
- Do not have to make information available to the public.
- There is a minimum of one director.

NGO:

- Section 21 of the Companies Act makes provision for this type of business and is regarded as a public company and the same applies as above, except there is no share capital.

The advantages of forming a company:

- A public company can issue shares to the public to raise capital.
- Shareholders are not liable for the debts of the company, often negated when shareholders are required to offer personal guarantees.
- As in the case of the close corporation, the company has “perpetual succession” (indefinite life-span), which means the business can continue even if the members die.

Forming a company:

- It is recommended that due to the relative complexity in the compilation of the memorandum and articles of a company and the fact that these documents to a greater extent have to be adjusted to fit the specific circumstances and needs of each individual company, it is suggested that the services of a legal

practitioner be used in this regard. The memorandum and articles also have to be certified by a notary public who in any event will have to be a member of the legal profession.

- The legal aspects of the company are regulated by the “Companies Act 61 of 1973”.
- Please note that all documents must be completed in black ink.

The memorandum and articles of association:

- The memorandum and articles of association have to be registered at the Registrar of Companies and Close Corporations. The forms are obtainable at any stationer dealing with statutory documents.
- Most attorneys and auditors have these forms on computer.
- Submit more than one name in order of preference to the Registrar, a Revenue stamp of N\$5.00 is required and is obtainable at any post office. This is to reserve the name you would like to register your company under and is completed on form (CM5).
- The amount of initial registered share capital. “Par value” shares (e.g. one hundred shares at N\$2.50 each) or “no par value” shares (e.g. one hundred shares). This is submitted to the Registrar on the CM2.
- Any legal company powers you would like to exclude or qualify.
- Mention any contract entered into by the members before registration of the company.
- Any special conditions.
- An association clause stating that you wish to form a company and how many shares they agree to own.
- The articles of association deal with the internal management of the company. Schedule 1 of the Companies Act has a model, which you could follow. (Similar to the CCs’ association agreement).

Other documents:

- Every other name of the company (translated or shortened form) should first be reserved separately on CM5 with a N\$5.00 revenue stamp for each name.
- CM7 “Approved translated version of name or abbreviated form” is submitted to the registrar with a N\$10.00 revenue stamp.
- CM22 Physical and postal address of the company is submitted to the registrar with a revenue stamp of N\$2.00.
- The auditor needs to complete a CM31, which contains all his details and serves as his consent to act for the company. This is submitted to the registrar with a N\$2,00 revenue stamp.
- Evidence that the necessary fees have been paid, a fee of N\$5,00 for each N\$1000 or part thereof of authorized share capital which is submitted on CM2. Annual duty is payable on a form CM23 a minimum amount of N\$80,00 depending on your issued capital.

- The articles of association deal with the internal management of the company. Schedule I of the Companies Act has a model, which you could follow. (Similar to the CCs' association agreement).

NB. Upon conversion of a close corporation into a company, a form CM5 will only be necessary if the name changes, otherwise no reservation of name is required. Statements in terms of section 29C (4) (a) (i) and (ii) of the Companies Act have to accompany all documents as listed above in the case of conversion.

When can a company start doing business?

After the following have been completed (and you have received your certificate to start the business):

- Particulars of directors and officers of the company are completed on form CM29 and are kept at the company's registered office for inspection. Form CM29 must be completed and submitted within 14 days of any change of appointment.

DOCUMENTS REQUIRED FOR THE INCORPORATION OF A COMPANY

DOCUMENT	PURPOSE	FEES
CM5 (in duplicate)	Application for reservation of name	Original stamped N\$5,00
Power of Attorney	Authorization to act on behalf of promoters	To be stamped N\$5,00 per person
CM22 (in duplicate)	Notification of situation of registered and postal address	Original stamped N\$2,00
CM29	Return containing particulars of directors	Original stamped N\$2,00
CM1	Certificate of incorporation	
CM46	Application for certificate to commence business.	Original stamped N\$10,00 plus annual duty
CM47 (by each director)	Statement by directors regarding adequacy of share capital	Original stamped N\$2,00
CM31 (in duplicate)	Consent to act as auditor	Original stamped N\$2,00

CATEGORY OF COMPANY	DOCUMENTS	PURPOSE	FEES
1. Company with a share capital	CM2, 2A, 2B, 2C or 2D	Memorandum of Association	N\$2,50 per R1 000 of authorized capital in the case of par value shares of N\$2,50 per 1000 shares in

			the case of no par value shares
2. Company without capital	CM44B, 44C	Articles of Association	
3. Company limited by guarantee, or association incorporated under section 21	CM3, 4, 4A, 4B	Certificate of incorporation and Memorandum of Association	
4. Company adopting Table A of B	CM44	Articles of Association	
5. Company not adopting Table A or B	CM44A, 44C	Articles of Association	

- The CM29 is part of the documentation necessary to incorporate the company and, only once the CM46 is received can the company start trading.
- Application for a certificate to start the business is completed on form CM46 and is submitted to the registrar with a N\$10 revenue stamp, plus annual duty.
- The director needs to complete written consent on form CM27 and is kept at the registered office of the company.
- A statement from each director testifying that the capital they have is sufficient to conduct business, if not, how they intend financing the company must be completed on form CM47 and is submitted to the Registrar with a revenue stamp of N\$2,00.
- The name of the company must appear on letterheads, invoices, receipts, cheques, notices etc.
- The names of the directors must appear on the bottom of the letterheads (and nationalities if not Namibians).
- Note that a company must pay annual duty within one month after the end of its financial year, a minimum of N\$80-00 affixed on form CM23.

The different classes of shares: Preference shares

- If liquidated, shareholders with preference shares are paid a fixed dividend before other shareholders are paid. Does not usually entitle a holder to a vote at company meetings.

Redeemable Preference shares

- The company has the option to buy back the shares in the future.

Ordinary shares

- This entitles the shareholder to one vote per share and dividends are paid out once the preference dividends have been paid. This is normally where a company's risk capital comes from.
- If a company wishes to increase its authorised share capital, it must be done through a special resolution of its shareholders. Form CM26 is submitted to the registrar with a N\$5.00 revenue stamp. Then CM11 is submitted to the registrar with a revenue stamp to the value of N\$2.50 per N\$1000 (share capital).

Directors

- If qualification shares are required, a director must subscribe in the Memorandum of Association for the required number, or else give an undertaking, on a CM28 form, that they will be acquired. A director who does not hold the specified number of qualification shares must vacate directorship.

Restrictions on the appointing of Directors:

- Any minor
- Anyone who has not tried to settle their debt.
- Anyone who has been removed from a position of trust as a result of misconduct.
- Anyone convicted of certain specified criminal offences.
- Anyone disqualified by the court.
- A person who does not qualify as a director may not be in management.
- The company's auditor may not be a director.
- An executive director is any employee who is appointed a director.
- The other directors normally appoint a managing director.

Directors' duties:

- The director is responsible for keeping accounting records and representing the transactions of the company and its financial position honestly and accurately.
- Financial statements are prepared and submitted to the Annual General Meeting
- These financial statements include the balance sheet, income statement, source and application of funds statement, cash flow statement, director's and auditor's reports.
- The Director's report must conform to Schedule 4 of the Companies Act.
- During all meetings, minutes must be taken and signed by the chairperson. Directors must also sign an attendance register.
- All Directors should approve any contract the company intends entering into.
- An auditor must be appointed or re-appointed at the Annual General Meeting. If not, directors are obliged to fill the vacancy within 30 days.
- Directors will be held liable for debts incurred through recklessness or intent to defraud the company.

Criminal Offences:

- Failure to keep minutes of company meetings, directors or management meetings.
- Failure to lodge written consent to act as a director or officer.
- Falsifying books and records
- Failure to submit details to the registrar concerning company membership.
- Failure to use the prescribed name of the company on company documents.
- Any breach of a whole host of regulations regarding share capital and shares, including the allotment and issue of shares, transfer of shares, classification of shares, directors' right to deal in shares, and the restriction placed on certain shares.
- Failure to register special resolutions.
- Failure to circulate notices of resolutions and statements to members entitled to receive them.
- Not holding the Annual General Meeting at the appropriate time.
- Issuing unsigned annual financial records.
- Failure to keep proper accounting records.
- Failure to convene General Meetings when these are requested by members.
- Failure to permit inspection of the minutes of company meetings.
- Pretending to be a director when not validly appointed as one.
- Failure to submit the necessary details in the registrar of directors and officers.
- Making loans to directors or officers, if this is prohibited by the Articles of Association.
- Misrepresenting the affairs of the company.
- Not notifying the registrar if an auditor has not been appointed.
- Secretaries and managers should also register with the company on a CM27 form as officers and executive officers.

Meetings:

- According to the Companies Act, a company should hold an Annual General Meeting.
- This should be held within 15 months of the date of the previous meeting.
- If the company is new the meeting should be held within 18 months of the company starting up.
- 21 days written notice of the meeting must be given.
- Certain matters have to be dealt with at these meetings: financial statements, approval of dividends, and election of directors.

Submitting annual returns to the Registrar:

- Both a director and a secretary must sign this form and a copy must also be kept at the registered office of the company.

Fees and penalty fees:

- Power of attorney (N\$5.00)

- Name of the company (CM5, N\$5.00 & CM 8, N\$25.00) Certificate to start business (CM46, N\$10.00)
- If the following is not completed within the time period allowed, a fine is payable
- Failure to lodge allotments (distribution of shares) with the Registrar.
- Failure to provide copies of specific resolutions found on CM26 form.
- Failure to provide particulars of directors, officers and auditors on CM29 form.
- Annual returns (CM23) payment of annual duties to keep the company alive, failure to submit this form will lead to the cancellation of the company from the Registrar's records. Minimum amount of N\$80.00 is payable

These documents can be obtained at Walton's Stationery or Typoprint.

As indicated above the memorandum and articles of association must be lodged in triplicate. The second and third set must be accompanied by a notarial certificate and be stamped with the seal of the notary on each page. These sets must be properly bound by the notary.

THE INCORPORATION OF A COMPANY NOT FOR GAIN (SECTION 21)

This kind of company is suitable for an association with the main object of promoting religion, art, sciences, education, charity, recreation or any other cultural or social activity or communal group interests.

Firstly the proposed name would be reserved. At this point in time the main object must also be stated. A Section 21 Company must have as its main object the advancement of religion, art, science, education, charity, entertainment, or other cultural or social activities, or of group or communal interests.

Once the name has been approved, the remaining documents may be drawn. The main documents are the Memorandum and Articles of Association. The company will be limited by guarantee as to the amount contributed by each member. No shares are issued.

A Section 21 Company is a public company, and all provisions in the Companies Act dealing with public companies, other than those provisions pertaining to the shares or share capital of a company, apply.

Accordingly in terms of sections 208; 32 and 66 of the Companies Act, 1973 (Act No 61 of 1973) the section 21 company must have a minimum of 7 members and at least 2 directors. There is no legal impediment to foreign members or directors. The written consent of a Namibian auditor to act for the company is required.

A notice of the registered address of the company in Namibia must be provided. This can be the address of the attorneys, auditor or company secretaries,

particularly if it is a new business venture in the process of establishment. This is the official address of the company and all legal documents would be served there.

The company must record its financial year end. This is important from the perspective of income tax, the rendering of income tax returns and the preparation of financial statements by the auditors.

Once incorporated, a public officer must be appointed in terms of the Income Tax legislation, who is a person responsible for dealing with the Ministry of Finance. Section 21 Companies do not automatically receive tax exemptions. These have to be applied for in terms of the relevant legislation. The corporate income tax rate is currently 35%.

All documents must be completed in black ink.

THE INCORPORATION OF A CLOSE CORPORATION

What is a close corporation (CC)?

- The close corporation (CC) is a business medium somewhere between a company and a partnership, designed to enhance the small business and promote the philosophy of free enterprise.
- A close corporation is founded by means of a founding statement and cannot exceed 10 members who own and manage the CC. Their interest in the CC must always add up to 100% and be expressed as a percentage.
- The close corporation must be profit making in its intentions.
- It provides the members with limited liability, but personal guarantees may negate a certain amount of this.

DOCUMENTS REQUIRED FOR THE INCORPORATION OF A COMPANY NOT FOR GAIN (SECTION 21)

DOCUMENT	PURPOSE	FEES
CM5 (in duplicate)		Original stamped N\$5,00
CM3 (in triplicate)	Certificate of incorporation	
CM4 (in triplicate)	Memorandum of Association of a company without a share capital	Original stamped N\$25,00
CM4A (in triplicate)	Guarantee concerning the liability of members	
CM4B (in triplicate)	Association clause and particulars of members	
CM22 (in duplicate)	Notice of registered office and postal address	

CM29	Contents of Register of Directors	N\$2,00
CM31 (in duplicate)	Consent to act as Auditor	N\$2,00
CM44B (in triplicate)	Articles of Association of a company without a share capital	
CM44C (in triplicate)	Signatories to Articles of Association	

- A close corporation is a legal entity on its own.
- A Company cannot become a member, as ownership is limited to natural persons.
- A close corporation is governed by the Close Corporations Act No. 26 of 1988.
- Dividends can only be paid if the close corporation is both liquid and solvent (dividends can only be paid if after they have paid, assets exceed liabilities and the business can still pay debts when they fall due).

Procedures and requirements for registration of a Close Corporation

- CC form can be purchased at most stationery stores dealing with statutory documentation.
- Complete the “Application for Reservation of Name or Translated Form or Shortened Form” (CC8). This must be submitted in duplicate to The Registrar of Companies and Close Corporations, PO Box 21214, Windhoek, Tel (061) 2837111. A Revenue stamp of N\$50 is required and is obtainable at any post office or at the Receiver of Revenue. A separate CC8 form is submitted for every other name together with a N\$50 revenue stamp for each application. The current processing time is between 5 to 10 working days in order for you to be informed of the outcome of your application.
- Once you receive confirmation, submit the “Founding Statement” (CC1), in triplicate to the Registrar. All members must sign the founding statement. You are also required to submit a letter of consent from your accounting officer and a copy of your (CC8). A Revenue stamp of N\$100 is required and is obtainable at any post office. You can start your business after you receive your Registered Founding Statement. The name of the corporation must be followed by the abbreviation CC and all members’ names must be printed at the bottom of letterheads (and nationalities if not South African).
- A close corporation does not need to have an association agreement, but is recommended as it binds members and regulates the internal relationships between members. It lays down the voting powers, payments (dividends), members rights and duties, meetings, remuneration, benefits, obligations and the extent to which the CC will indemnify members from expenditure incurred for or on its behalf.
- The accounting officer is required to submit reliable annual financial records, which agree with the accounting records.

- Once the CC has been formed the Receiver of Revenue will ask for the name of your public officer, whose duty is to submit the annual tax returns to the Receiver.
- If you need to amend details of the founding statement then you will need to submit (CC2), in triplicate to the Registrar. A Revenue stamp of N\$30 (obtainable at any post office or at the Receiver of Revenue) is required when there are any changes to details in part A of the CC2 form. Always complete the form in full, even though the rest of the information is unchanged.
- If you need to amend the accounting officer then you will need to submit (CC2), in triplicate to the Registrar without a revenue stamp.
- If you would like to convert your company to a CC you will need to submit (CC4), in duplicate to the Registrar without a revenue stamp, together with all the other forms needed for registration.
- If you would like to de-register your CC you will need to submit a letter to the Registrar, informing the Registrar that the CC has ceased to carry on business and that they should take the necessary steps.
- If you would like to restore your CC you will need to submit (CC3), in duplicate to the Registrar with a Revenue stamp of N\$150. Restoration could take 3 months. (Sometimes it is better and quicker to form a new CC).
- If you would like to change the financial year end of the CC you will need to submit (CC9) with a revenue stamp of N\$40.00 plus half the annual duty if you wish to extend the period.
- Form CC7 (annual return) with a N\$80.00 revenue stamp must be submitted the Registrar within one month after the end of the financial year.

The close corporation is a much more simplified legal form than the company and is specifically aimed at the small business. For the incorporation of a close corporation, the following documents have to be lodged.

These documents can be obtained at Walton's Stationery.

Note that any person may complete a founding statement and submit it to the Registered mail or certified post. It is not necessary for it to be done by a professional person or submitted personally.

SOLE PROPRIETORSHIP, PARTNERSHIP & JOINT VENTURE

Sole proprietorship

What is a sole proprietor?

- An individual running a business in his own name or under a trade name, not in one of the above-mentioned forms, is automatically a sole proprietor.
- The business and personal assets of the owner are considered to be one, therefore (not a separate legal entity) the owner is personally responsible for debts incurred by the business.

- All loans taken out for this type of business are taken out in the owner's name, therefore the owner stands to lose everything, including his private estate if the business fails.
- All profits are due to the owner in his/her personal capacity. You may also have to register for some if not all of the following:
 - Provisional Tax
 - Employees Tax
 - Income tax
 - Value Added Tax
 - Trading licences
 - Business Name
 - Social Security
 - Trade mark, copyright, patents & designs

Note that this type of business may be registered as a defensive name (business name) only!

Partnership or joint venture

What is a partnership or joint venture?

- This is when two or more people decide to conduct a business together; all partners bear equal responsibility for debts incurred.
- It is advisable to consult a legal expert to draw up a written partnership agreement, this contract is the only requirement needed to set up a partnership and could be done without a lawyer.
- A partnership agreement should deal with the following issues: formation, profit sharing arrangements, salaries, banking arrangements, changes of partners, liquidation, responsibilities of partners.
- A partnership is not allowed more than 20 partners, except in certain instances.
- All partners are required to include all income from the partnership in their personal tax returns available from the Receiver of Revenue (this only carries the cost of postage - some banks offer assistance with the completion of this form free of charge as a customer service).

Difference between a close corporation or incorporation of a company

COMPANIES	CLOSE CORPORATIONS
Return required at specific intervals	No returns required
Compulsory meetings as prescribed by Act. First annual general meeting must be held within eighteen months of incorporation.	No compulsory meetings (members may meet on ad-hoc basis)
Management rests mainly with directors	All members may take part in management
Close corporation may be a shareholder in a company	Company may not be a member of a close corporation
Audit of annual financial statements	No audit required

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You may also have to register for some if not all of the following:

- Provisional Tax
- Employees Tax
- Income tax
- Value Added Tax
- Trading licences
- Business Name
- Social security
- Trade mark, copyright, patents & designs

Why form a partnership or a joint venture?

- To acquire certain skills.
- To acquire additional capital.
- The business is growing and you can't manage the business on your own.

A person may be retiring and is looking for someone to manage his business on his behalf so that he can become a "sleeping partner."

Note that these forms of businesses are not registered at the Office of the Registrar.

DOCUMENT	PURPOSE	FEES
CC8	Reservation of name	N\$50,00
CC1 (in triplicate)	Founding statement	N\$100,00
Letter by accounting officer	Consent of person named as accounting officer of close corporation to act as such*	