

AMENDMENTS TO THE CLOSE CORPORATIONS AMENDMENT ACT BILL

[B. 6 OF 2023]

**Directorate Legislative Drafting,
Ministry of Justice, Namibia
Certified by: M. J. Mahalie
Date: 03/07/2023**

THAT:

In clause 16A – Substitute subclauses (9) and (10) and add the subclauses as follows:

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

(11) If the Registrar has reasonable grounds to believe that a close corporation 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 close corporation instructing the close corporation 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 close corporation 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 close corporation has previously failed to comply with this section; and
- (c) any remedial steps taken by the close corporation 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 close corporation or person -

- (a) if the close corporation or person has failed to keep and maintain a register or the time periods referred to in subsection (1), (3), (9) or (10) a financial penalty not exceeding N\$50 000; and
- (b) if the close corporation 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\$ 1000 for every day during which the contravention continues.

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

(16) On imposing the administrative penalties under subsection (14), the Registrar must in writing notify the close corporation -

- (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.

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

(18) A close corporation 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 close corporation or a person may be subjected to, but where the close corporation 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.”.

In the Short title -

2. Substitution of the short title for the following:

“Short title

3. This Act is called the Close Corporation Amendment Act, 2023.”.
