

MINISTRY OF INDUSTRIALISATION AND TRADE

NOTICE 0101 OF 2022

COMPANIES AMENDMENT BILL, 2022

1. Section 1 of the Principal Act is hereby amended –

by inserting, in the appropriate alphabetical order, the following new definition –

“beneficial owner” or “ultimate beneficial owner” –

(a) means any natural person who ultimately owns or controls a company or the natural person on whose behalf a transaction or activity is being conducted in relation to a company; and

(b) is the natural person who ultimately owns or controls a company through –

(i) direct or indirect ownership of such shares in such percentage as may be prescribed;

(ii) voting rights;

(iii) ownership interest;

(iv) control by any other means; or

(c) otherwise exercises control over the management of the legal person in his or her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner.

2. Section 107 of the Principal Act is hereby repealed in its entirety and is substituted with the following section:

(1) Bearer of existing warrants after the amendment of this section are to convert their warrants into ordinary par value shares

3. Section 112 of the Principal Act is hereby amended to add subsection 9 – 18

(9) Every company shall maintain an accurate and up-to-date register of the beneficial owner or owners of the company, to be known as the register of beneficial owners which register shall—

(a) be kept, within Namibia, and at the same office at which the register of members is kept; and

(b) with respect to each director, record his or her first name and surname, any former first

name and surname, an identification reference number appearing in his or her identity document, his or her full residential or business address and postal address and his or her nationality, as well as the nature and extent of his or her beneficial ownership in the company.

(10) Every company shall file with the Registrar, in prescribed form, accurate and up-to-date beneficial ownership information referred to in this section and shall within seven days of any change file updates as and when there is any material change to the information.

(11) Beneficial ownership information held and maintained in terms of this section, either by the company or by the Registrar, shall be made available for inspection by the Financial Intelligence Centre or by a Competent Authority referred to in the Financial Intelligence Act or any other relevant legislation,

(12) The company shall appoint a person, resident in Namibia, who shall be responsible for keeping custody of the register of beneficial owners and who shall be authorised to make the information available to the Financial Intelligence Centre or Competent authorities, upon request.

(13) The names and sufficient contact details of the person referred to in subsection (11) shall be recorded in the form filed by the company with the Registrar in terms of subsection (10).

(14) Beneficial ownership and other company information held by the Registrar, shall be public information and shall be available for inspection, whether electronically or physically—

(a) by members of the public (subject to section 8); and

(b) by a financial institution or a designated non-financial business or profession

(15) The Registrar or the Financial Intelligence Centre may each, on its own behalf or on behalf of a Competent authority, seek beneficial ownership or other company information from their foreign counterparts, in respect of any company, and, likewise, may provide beneficial ownership or other company information to their foreign counterparts.

(16) The Registrar and the Financial Intelligence Centre and any competent authority which, through them, requests beneficial ownership and other company information from other countries, shall monitor the quality of the assistance given by the foreign authorities and shall keep records of such requests and responses.

(17) The company or its administrators, liquidators or other persons involved in the dissolution of the company, shall maintain beneficial ownership information records for a period of at least five years after the date on which the company is dissolved or otherwise ceases to exist.

(18) Any person who fails to comply with the requirements of subsection (9), (10), (11), (12), (13) or (17) shall be guilty of an offence and be liable to a fine not exceeding 10 million Namibian dollars or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

3. Section 147 of the principal Act is hereby amended –

(a) by the substitution for subsection (1) – (11) of the following subsections:

“Information about beneficial or ultimate beneficial ownership in a company’s shares

147(1) Unless the context otherwise indicates, this section applies only to all companies registered under this Act and references to a company’s shares, in this section, are to the company’s issued shares of a class carrying rights to vote in all circumstances at general meetings of the company.

(2) The temporary suspension of voting rights in respect of any shares does not affect the application of this section in relation to interests in those or any other shares.

Notice requiring information about interests in shares

(3) A company may give notice under this section to any person whom the company knows or has reasonable cause to believe—

(a) to in the beneficial owner or the ultimate beneficial owner of the company’s shares, or

(b) to have been t the beneficial owner or ultimate beneficial owner at any time during the three years immediately preceding the date on which the notice is issued.

(4) The notice may require the person—

(a) to confirm that fact or (as the case may be) to state whether or not it is the case, and

(b) if he is such a beneficial owner or ultimate beneficial owner, or has during that time been such a beneficial owner or ultimate beneficial owner, to give such further information as may be required in accordance with the following provisions of this section.

(5) The notice may require the person to whom it is addressed to give particulars of his own present or past beneficial ownership in the company’s shares (held by him at any time during the three year period mentioned in subsection (3)(b)).

(6) The notice may require the person to whom it is addressed, where—

(a) his beneficial ownership or ultimate beneficial ownership in the shares subsists, or

(b) such beneficial or ultimate beneficial ownership subsisted during that three year period at a time when his ownership subsisted,

to give, so far as lies within his knowledge, such particulars with respect to that beneficial ownership or ultimate beneficial ownership as may be required by the notice.

(7) The particulars referred to in subsections (5) and (6) include—

(a) the identity of the beneficial or ultimate beneficial owner of the shares in question, and

(b) whether beneficial or ultimate beneficial owners of shares are or were parties to—

(i) a share acquisition agreement, or

(ii) an agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(8) The notice may require the person to whom it is addressed, where his beneficial or ultimate beneficial ownership is a past interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that beneficial or ultimate beneficial ownership immediately upon his ceasing to hold it.

(9) The information required by the notice must be given within such reasonable time as may be specified in the notice.

(10) Where—

(a) a notice under this section (notice requiring information about beneficial or ultimate beneficial ownership in company's shares) is served by a company on a person who is or was a beneficial or ultimate beneficial owner in shares in the company, and

(b) that person fails to give the company the information required by the notice within the time specified in it,

the company may apply to the court for an order directing that the shares in question be subject to restrictions.

(11) If the court is satisfied that such an order may unfairly affect the rights of third parties in respect of the shares, the court may, for the purpose of protecting those rights and subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order shall not constitute a breach of the restrictions.

(12) On an application under subsection (11) the court may make an interim order and any such order may be made unconditionally or on such terms as the court thinks fit.

(13) A person who—

(a) fails to comply with a notice under this section (notice requiring information about beneficial or ultimate beneficial ownership in company's shares), or

(b) in purported compliance with such a notice—

(i) makes a statement that he knows to be false in a material particular, or

(ii) recklessly makes a statement that is false in a material particular,

commits an offence.

(14) A person does not commit an offence under subsection (13) if he proves that the requirement to give information was frivolous or vexatious.

(15) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine prescribed by regulations which should not be less than N\$100, 000.00 (or both);

(b) on summary conviction—

(i) to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory minimum of N\$ 100, 000.00 (or both);

(16) A person is not obliged to comply with a notice under section 147 (notice requiring information about beneficial or ultimate beneficial ownership in company's shares) if he is for the time being exempted by the Minister from the operation of that section.

(17) The Minister must not grant any such exemption unless—

(a) he has consulted the Governor of the Bank of Namibia, and

(b) he (the Minister) is satisfied that, having regard to any undertaking given by the person in question with respect to any interest held or to be held by him in any shares, there are special reasons why that person should not be subject to the obligations imposed by that section.

(18) The effect of an order under section 147 that shares are subject to restrictions is as follows—

(a) any transfer of the shares is void;

(b) no voting rights are exercisable in respect of the shares;

(c) no further shares may be issued in right of the shares or in pursuance of an offer made to their holder;

(d) except in a liquidation, no payment may be made of sums due from the company on the shares, whether in respect of capital or otherwise.

(19) Where shares are subject to the restriction in subsection (18)(a), an agreement to transfer the shares is void.

(20) The invalidity referred to in subsection (19) does not apply to an agreement to transfer the shares on the making of an order under section 147B made by virtue of subsection (3)(b) (removal of restrictions in case of court-approved transfer).

(21) Where shares are subject to the restriction in subsection (18)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), is void.

This does not apply to an agreement to transfer any such right on the making of an order under section 147B made by virtue of subsection (3)(b) (removal of restrictions in case of court-approved transfer).

(b) by the insertion after section 147 of the following item: "147A. 'Penalty for attempted evasion of restrictions' as follows:

147A Penalty for attempted evasion of restrictions

(1) This section applies where shares are subject to restrictions by virtue of an order under section 147(10).

(2) A person commits an offence if he—

(a) exercises or purports to exercise any right—

(i) to dispose of shares that to his knowledge, are for the time being subject to restrictions, or

(ii) to dispose of any right to be issued with any such shares, or

(b) votes in respect of any such shares (whether as holder or proxy), or appoints a proxy to vote in respect of them, or

(c) being the holder of any such shares, fails to notify of their being subject to those restrictions a person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy, or

(d) being the holder of any such shares, or being entitled to a right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into an agreement which is void under section 147(18) or (19).

(3) If shares in a company are issued in contravention of the restrictions, an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a prescribed fine which is, in any event, not less than N\$100, 000.00;

(b) on summary conviction, to a fine not exceeding the statutory minimum.

(5) The provisions of this section are subject—

(a) to any directions under—

- section 147(18) (directions for protection of third parties), or
- section 147A or 147B (relaxation or removal of restrictions), and

(b) in the case of an interim order under section 147(12

), to the terms of the order.

(6) An application may be made to the court on the ground that an order directing that shares shall be subject to restrictions unfairly affects the rights of third parties in respect of the shares.

(7) An application for an order under this section may be made by the company or by any person aggrieved.

(8) If the court is satisfied that the application is well-founded, it may, for the purpose of protecting the rights of third parties in respect of the shares, and subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order do not constitute a breach of the restrictions.

(c) by the insertion after item 147A of the following item: "147B.' Removal of restrictions' as follows:

147B Removal of restrictions

(1) An application may be made to the court for an order directing that the shares shall cease to be subject to restrictions.

(2) An application for an order under this section may be made by the company or by any person aggrieved.

(3) The court must not make an order under this section unless—

(a) it is satisfied that the relevant facts about the shares have been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure, or

(b) the shares are to be transferred for valuable consideration and the court approves the transfer.

(4) An order under this section made by virtue of subsection (3)(b) may continue, in whole or in part, the restrictions mentioned in section 147(18)(c) and (d) (restrictions on issue of further shares or making of payments) so far as they relate to a right acquired or offer made before the transfer.

(5) Where any restrictions continue in force under subsection (4)—

(a) an application may be made under this section for an order directing that the shares shall cease to be subject to those restrictions, and

(b) subsection (3) does not apply in relation to the making of such an order.

(6) The court may order that the shares subject to restrictions be sold, subject to the court's approval as to the sale.

(7) An application for an order under subsection (1) may only be made by the company.

(8) Where the court has made an order under this section, it may make such further order relating to the sale or transfer of the shares as it thinks fit.

(9) An application for an order under subsection (3) may be made—

(a) by the company,

(b) by the person appointed by or in pursuance of the order to effect the sale, or

(c) by any person interested in the shares.

(10) On making an order under subsection (6) or (7) the court may order that the applicant's costs be paid out of the proceeds of sale.

(11) Where shares are sold in pursuance of an order of the court under subsection (6), the proceeds of the sale, less the costs of the sale, must be paid into court for the benefit of the persons who are beneficial or ultimate beneficial owners of the shares.

(12) A person who is a beneficial or ultimate beneficial owner of the shares may apply to the court for the whole or part of those proceeds to be paid to him.

(13) On such an application the court shall order the payment to the applicant of—

(a) the whole of the proceeds of sale together with any interest on them, or

(b) if another person had a beneficial or ultimate beneficial ownership in the shares at the time of their sale, such proportion of the proceeds and interest as the value of the applicant's beneficial or ultimate beneficial ownership in the shares bears to the total value of the shares.

This is subject to the following qualification.

(14) If the court has ordered under section 147B(10) that the costs of an applicant under that section are to be paid out of the proceeds of sale, the applicant is entitled to payment of his costs out of those proceeds before any beneficial or ultimate beneficial owner in the shares receives any part of those proceeds.

(15) The members of a company may require it to exercise its powers under section 147 (notice requiring information about beneficial or ultimate beneficial ownership in shares).

(16) A company is required to do so once it has received requests (to the same effect) from members of the company holding at least 10% of such of the paid-up capital of the company as carries a right to vote at general meetings of the company.

(17) A request—

(a) may be in hard copy form or in electronic form,

(b) must—

(i) state that the company is requested to exercise its powers under section 147,

(ii) specify the manner in which the company is requested to act, and

(iii) give reasonable grounds for requiring the company to exercise those powers in the manner specified, and

(c) must be authenticated by the person or persons making it.

(18) A company that is required under subsections (15) – (17) to exercise its powers under section 147 (notice requiring information about beneficial or ultimate beneficial ownership in company's shares) must exercise those powers in the manner specified in the requests.

(19) If default is made in complying with subsection (18) an offence is committed by every officer of the company who is in default.

(20) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(21) On the conclusion of an investigation carried out by a company in pursuance of a requirement under subsections (15) – (17) the company must cause a report of the information received in pursuance of the investigation to be prepared, which must be made available for inspection within a reasonable period (not more than 15 days) after the conclusion of the investigation.

(22)Where—

(a) a company undertakes an investigation in pursuance of a requirement under subsection (15), and

(b) the investigation is not concluded within three months after the date on which the company became subject to the requirement,

the company must cause to be prepared in respect of that period, and in respect of each succeeding period of three months ending before the conclusion of the investigation, an interim report of the information received during that period in pursuance of the investigation.

(23)Each such report must be made available for inspection within a reasonable period (not more than 15 days) after the end of the period to which it relates.

(24)The reports must be retained by the company for at least six years from the date on which they are first made available for inspection and must be kept available for inspection during that time—

(a) at the company's registered office, or

(b) at a place specified in regulations.

(25)The company must give notice to the registrar—

(a) of the place at which the reports are kept available for inspection, and

(b) of any change in that place,

unless they have at all times been kept at the company's registered office.

(25) The company must within three days of making any report prepared under this section available for inspection, notify the members who made the requests under subsection (17) where the report is so available.

(26)For the purposes of this section an investigation carried out by a company in pursuance of a requirement under subsection (15) is concluded when—

(a) the company has made all such inquiries as are necessary or expedient for the purposes of the requirement, and

(b) in the case of each such inquiry—

(i) a response has been received by the company, or

(ii) the time allowed for a response has elapsed.

(d) by the insertion after item 147B of the following item: "147C. 'Report to members: Offences' as follows:

147C Report to members: Offences

(1) If default is made for 14 days in complying with subsection (25) (notice to registrar of place at which reports made available for inspection) an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not less than N\$100, 000.00 or to be imprisoned for a period which does not exceed two years or to both the fine and imprisonment.

(3) If default is made in complying with any other provision of section 147C (report to members on outcome of investigation), an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(e) by the insertion after item 147C of the following item: "147D. 'Right to inspect and request copy of reports' as follows:

147D Right to inspect and request copy of reports

(1) Any report prepared under section 147B must be open to inspection by any person without charge.

(2) Any person is entitled, on request and on payment of such fee as may be prescribed, to be provided with a copy of any such report or any part of it.

(a) The copy must be provided within ten days after the request is received by the company.

(3) If an inspection required under subsection (1) is refused, or default is made in complying with subsection (2), an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not less than N\$10, 000.00 and, for continued contravention, a daily default fine not exceeding N\$10, 000.00.

(5) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requiring it.

Register of beneficial or ultimate beneficial ownership disclosed

(6) The company must keep a register of information received by it in pursuance of a requirement imposed under section 147 (notice requiring information about beneficial or ultimate beneficial ownership in company's shares).

(7) A company which receives any such information must, within three days of the receipt, enter in the register—

- (a) the fact that the requirement was imposed and the date on which it was imposed, and
- (b) the information received in pursuance of the requirement.

(8) The information must be entered against the name of the present holder of the shares in question or, if there is no present holder or the present holder is not known, against the name of the person holding the beneficial or ultimate beneficial ownership.

(9) The register must be made up so that the entries against the names entered in it appear in chronological order.

(10) If default is made in complying with this section an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not less than N\$100, 000.00 and, for continued contravention, a daily default fine not exceeding N4800.

(7) The company is not by virtue of anything done for the purposes of this section affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares.

(f) by the insertion after item 147D of the following item: "147E. 'Register to be kept available for inspection' as follows:

147E Register to be kept available for inspection

(1) The register kept under section 147D (6) (register of beneficial or ultimate beneficial ownership disclosed) must be kept available for inspection—

- (a) at the company's registered office, or
- (b) at a place specified in regulations.

(2) A company must give notice to the registrar of companies of the place where the register is kept available for inspection and of any change in that place.

(3) No such notice is required if the register has at all times been kept available for inspection at the company's registered office.

(4) If default is made in complying with subsection (1), or a company makes default for 14 days in complying with subsection (2), an offence is committed by—

- (a) the company, and

(b) every officer of the company who is in default.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not less than N\$100, 000.00 and, for continued contravention, a daily default fine not exceeding N\$10, 000.00.

(g) by the insertion after item 147E of the following item: "147F. 'Court supervision 7of purpose for which rights may be exercised' as follows:

147F Court supervision of purpose for which rights may be exercised

(1) Where a company receives a request under section 147E (register of beneficial or ultimate beneficial ownership disclosed: right to inspect and require copy), it must—

(a) comply with the request if it is satisfied that it is made for a proper purpose, and

(b) refuse the request if it is not so satisfied.

(2) If the company refuses the request, it must inform the person making the request, stating the reason why it is not satisfied.

(3) A person whose request is refused may apply to the court.

(4) If an application is made to the court—

(a) the person who made the request must notify the company, and

(b) the company must use its best endeavours to notify any persons whose details would be disclosed if the company were required to comply with the request.

(5) If the court is not satisfied that the inspection or copy is sought for a proper purpose, it shall direct the company not to comply with the request.

(6) If the court makes such a direction and it appears to the court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request.

The order must contain such provision as appears to the court appropriate to identify the requests to which it applies.

(7) If the court does not direct the company not to comply with the request, the company must comply with the request immediately upon the court giving its decision or, as the case may be, the proceedings being discontinued.

(h) by the insertion after item 147F of the following item: "147G. 'Register of beneficial or ultimate beneficial ownership disclosed: refusal of inspection or default in providing copy' as follows:

147G Register of beneficial or ultimate beneficial ownership disclosed: refusal of inspection or default in providing copy

(1) If an inspection required under section 147E (register of interests disclosed: right to inspect and require copy) is refused or default is made in providing a copy required under that section, otherwise than in accordance with an order of the court, an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not less than N\$ 100, 000.00 and, for continued contravention, a daily default fine not exceeding N\$10, 000.00.

(3) In the case of any such refusal or default the court may by order compel an immediate inspection or, as the case may be, direct that the copy required be sent to the person requesting it.

(4) It is an offence for a person knowingly or recklessly to make in a request under section 147E (register of beneficial or ultimate beneficial ownership disclosed: right to inspect or require copy) a statement that is misleading, false or deceptive in a material particular.

(5) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by that section—

(a) to do anything that results in the information being disclosed to another person, or

(b) to fail to do anything with the result that the information is disclosed to another person,

knowing, or having reason to suspect, that person may use the information for a purpose that is not a proper purpose.

(3) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both);

(b) on summary conviction—

(i) to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum (or both);

(i) by the insertion after item 147G of the following item: "147H. 'Report to members: Offences' as follows:

147H Removal of entries from register

(1) A company may remove an entry from the register kept under section 147E (register of beneficial or ultimate beneficial ownership disclosed) if more than six years have elapsed since the entry was made.

(2) If a person gives to a company the name and address of another person as being in the beneficial or ultimate beneficial owner of shares in the company, that other person may apply to the company for the removal of the entry from the register.

(3) If the company is satisfied that the information in pursuance of which the entry was made is incorrect, it shall remove the entry.

(4) If an application under subsection (3) is refused, the applicant may apply to the court for an order directing the company to remove the entry in question from the register.

(5) The court may make such an order if it thinks fit.

(j) by the insertion after item 147H of the following item: "147I. 'Duty of company ceasing to be public company:

147I. Duty of company ceasing to be public company

(1) If a company ceases to be a company, it must continue to keep any register kept under section 147E (register of beneficial or ultimate beneficial ownership disclosed) until the end of the period of six years after it ceased to be a company.

(2) If default is made in complying with this section, an offence is committed by—

(a) the company, and

(b) every officer of the company who is in default.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not less than N\$100, 000.00 and, for continued contravention, a daily default fine not exceeding N\$10, 000.00.

(k) by the insertion after item 147I of the following item: "147J. 'Meaning of beneficial or ultimate beneficial ownership in shares' as follows:

147J. Meaning of beneficial or ultimate beneficial ownership in shares

Beneficial or ultimate beneficial ownership in shares: general

(1) This subsection applies to determine for the purposes of this Part whether a person has beneficial or ultimate beneficial ownership in shares.

(2) In this Part—

(a) a reference to beneficial or ultimate beneficial ownership in shares includes an interest of any kind whatsoever in the shares, including the right of enjoyment of the benefits of any corporeal or incorporeal property or assets associated with the shares in question; and

(b) any restraints or restrictions to which the exercise of any right attached to the beneficial or ultimate beneficial ownership is or may be subject shall be disregarded.

(3) Where a beneficial or ultimate beneficial ownership in shares is comprised in property held on trust, every beneficiary of the trust is treated as having beneficial or ultimate beneficial ownership in the shares.

(4) A person is treated as having beneficial or ultimate beneficial ownership in shares if—

(a) he enters into a contract to acquire them, or

(b) not being the registered holder, he is entitled—

(i) to exercise any right conferred by the holding of the shares, or

(ii) to control the exercise of any such right.

(5) For the purposes of subsection (4)(b) a person is entitled to exercise or control the exercise of a right conferred by the holding of shares if he—

(a) has a right (whether subject to conditions or not) the exercise of which would make him so entitled, or

(b) is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(6) A person is treated as having a beneficial or ultimate beneficial ownership in shares if—

(a) he has a right to call for delivery of the shares to himself or to his order, or

(b) he has a right to acquire a beneficial or ultimate beneficial ownership in shares or is under an obligation to take beneficial or ultimate beneficial ownership in shares.

This applies whether the right or obligation is conditional or absolute.

(7) Persons having a joint beneficial or ultimate beneficial ownership are treated as each having that beneficial or ultimate beneficial ownership.

(8) It is immaterial that shares in which a person has beneficial or ultimate beneficial ownership are unidentifiable.

Beneficial or ultimate beneficial ownership in shares: right to subscribe for shares

(9) Section 147 (notice by company requiring information about beneficial or ultimate beneficial ownership in its shares) applies in relation to a person who has, or previously had, or is or was entitled to acquire, a right to subscribe for shares in the company as it applies in relation to a person who is or was beneficial or ultimate beneficial owner of shares in that company.

(10) References in that section to an interest in shares shall be read accordingly.

Beneficial or ultimate beneficial interest in shares: family interests

(11) For the purposes of this Part a person is taken to be a beneficial or ultimate beneficial owner of shares in which—

(a) his spouse or civil partner, or

(b) any minor child or step-child of his,

is interested.

Beneficial or ultimate beneficial ownership in shares: corporate interests

(12) For the purposes of this Part a person is taken to be a beneficial or ultimate beneficial owner of shares if a body corporate has beneficial or ultimate beneficial ownership in them and—

- (a) the body or its directors are accustomed to act in accordance with his directions or instructions, or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the body.

(13) For the purposes of this section a person is treated as entitled to exercise or control the exercise of voting power if—

- (a) another body corporate is entitled to exercise or control the exercise of that voting power, and
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body corporate.

(14) For the purposes of this subsection a person is treated as entitled to exercise or control the exercise of voting power if—

- (a) he has a right (whether or not subject to conditions) the exercise of which would make him so entitled, or
- (b) he is under an obligation (whether or not subject to conditions) the fulfilment of which would make him so entitled.

Beneficial or ultimate beneficial ownership in shares: agreement to acquire interests in a particular company

(15) For the purposes of this Part beneficial or ultimate beneficial ownership in shares may arise from an agreement between two or more persons that includes provision for the acquisition by any one or more of them of beneficial or ultimate beneficial ownership in shares of a particular company (the “target company” for that agreement).

(16) This subsection applies to such an agreement if—

- (a) the agreement includes provision imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in the shares of the target company acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the company’s shares to which the agreement relates), and
- (b) a beneficial or ultimate beneficial ownership in the target company’s shares is in fact acquired by any of the parties in pursuance of the agreement.

(17) The reference in subsection (2) to the use of beneficial or ultimate ownership in shares in the target company is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).

(18) Once a beneficial or ultimate beneficial ownership in shares in the target company has been acquired in pursuance of the agreement, this section continues to apply to the agreement so long as the agreement continues to include provisions of any description mentioned in subsection (15).

(19) This applies irrespective of—

- (a) whether or not any further acquisitions of interests in the company's shares take place in pursuance of the agreement;
- (b) any change in the persons who are for the time being parties to it;
- (c) any variation of the agreement.

(20) References in this subsection to the agreement include any agreement having effect (whether directly or indirectly) in substitution for the original agreement.

(21) In this section—

- (a) “agreement” includes any agreement or arrangement, and
- (b) references to provisions of an agreement include—
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.

(22) References elsewhere in this Part to an agreement to which this section applies have a corresponding meaning.

(23) This section does not apply—

- (a) to an agreement that is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; or
- (b) to an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

Extent of obligation in case of share acquisition agreement

(24) For the purposes of this Part each party to an agreement to which sub-section (15) applies is treated as having beneficial or ultimate beneficial ownership in all shares in the target company in which any other party to the agreement is in beneficial or ultimate beneficial ownership apart from the agreement (whether or not the beneficial ownership of the other party was acquired, or includes any beneficial ownership that was acquired, in pursuance of the agreement).

(25) For those purposes a beneficial or ultimate beneficial interest of a party to such an agreement in shares in the target company is a beneficial or ultimate beneficial ownership apart from the agreement if he is beneficially interested in those shares otherwise than by virtue of the application of sub-section (15) in relation to the agreement.

(26) Accordingly, any such beneficial or ultimate beneficial ownership of the person (apart from the agreement) includes for those purposes any interest treated as his under section 147J(11) or (12) (family or corporate interests) or by the application of sub-section (15) in relation to any other agreement with respect to shares in the target company to which he is a party.

(27) A notification with respect to his beneficial or ultimate beneficial ownership in shares in the target company made to the company under this Part by a person who is for the time being a party to an agreement to which sub-section (15) applies must—

- (a) state that the person making the notification is a party to such an agreement,
- (b) include the names and (so far as known to him) the addresses of the other parties to the agreement, identifying them as such, and
- (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by virtue of section 824 (and this section) and, if so, the number of those shares.

Other supplementary provisions

- (1) by the insertion after item 147J of the following item: “147K. ‘Reckoning of periods for fulfilling obligations and Power to make further provision by regulations’ as follows:

147K Reckoning of periods for fulfilling obligations and Power to make further provision by regulations

- (1) Where the period allowed by any provision of this Part for fulfilling an obligation is expressed as a number of days, any day that is not a working day shall be disregarded in reckoning that period.

Power to make further provision by regulations

- (2) The Minister may by regulations amend—
 - (a) the definition of shares to which this Part applies,
 - (b) the provisions as to notice by a company requiring information about interests in its shares (section 147), and
 - (c) the provisions as to what is taken to be an interest in shares (section 147J).
- (3) The regulations may amend, repeal or replace those provisions and make such other consequential amendments or repeals of provisions of this Part as appear to the Secretary of State to be appropriate.
- (4) Every company with shares listed on a regulated market in Namibia must—
 - (a) establish and maintain a register of interests in terms of this section; and
 - (b) publish in its annual financial statement, a list of persons who in aggregate, alone or together with another person hold beneficial or ultimate beneficial ownership amounting 20% or more of the total number of shares of that class, issued by the company or any such percentage as may be prescribed by the Minister.