



GOVERNMENT GAZETTE

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REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 294 2000

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. 29 of 2000: Stock Exchanges Control Amendment Act, 2000.

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 Stock Exchanges Control Act, 1985, so as to make provision for a body corporate to be able to become a member of stock exchange; to empower the Minister of Finance to determine the minimum capital requirement for members of stock exchange; to provide for the disclosure of information relating to securities; and to provide for incidental matters.

(Signed by the President on 21 December 2000)

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

Amendment of section 3 of Act No. 1 of 1985, as amended by section 2(a) of Act No. 26 of 1992

1. Section 3 of the Stock Exchanges Control Act, 1985 (hereinafter referred to as "the principle Act") is amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) in the case of such buying and selling on his or her own account, he or she is a stock-broker and the buying and selling is effected as is contemplated in section 12(1)(c) and (d)[(i), (ii),(iii), (iv) **or** (v)], or he or she is a person other than a stock-broker and the buying and selling is effected through a stock-broker; or”.

Substitution of section 7 of Act No. 1 of 1985, as substituted by section 3 of Act No. 26 of 1992

2. The principal Act is amended by the substitution for section 7 of the following section:

“Application for issue or renewal of stock exchange licence

7. (1) Notwithstanding the provisions of section 30 of the Companies Act, 1973 (Act No. 61 of 1973), any number of persons as the Minister may approve may form an association to carry on the business of a stock exchange, and the association may apply for and be issued with a licence to carry on the business of a stock exchange.

(2) A stock exchange licence shall be issued or renewed by the Registrar.

(3) An application for the issue or renewal of a stock exchange licence shall be made in the prescribed manner and form, and be accompanied -

(a) by the prescribed application fee; and

(b) in the case of an application for the issue of a licence, by five copies of the proposed rules of the applicant.

(4) Upon receipt of an application for the issue of a stock exchange licence, the Registrar shall advertise the application by notice in the *Gazette* and once in each three consecutive weeks in two newspapers circulating nationally at the expense of the applicant.

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- (5) The advertisement referred to in subsection (4) shall state -
- (a) the name of the applicant;
 - (b) the place where the rules of the applicant shall lie open for inspection by any member of the public; and
 - (c) the period within which any objections to the issue of the licence may be lodged with the Registrar, not being less than 14 days from the date of the last publication of the advertisement.”

Substitution of section 8 of Act No. 1 of 1985, as amended by section 5 of Act No. 26 of 1992

3. The principal Act is amended by the substitution for section 8 of the following section:

“Issue of stock exchange licence

8. On the expiry of the period contemplated in section 7(5)(c) the Registrar may, after consideration of any objection lodged under that section, issue to the applicant a licence to carry on the business of a stock exchange, if -

- (a) the interests of the public would be served by the issue of the licence;
- (b) at least two members of the applicant will carry on the business as buyers and sellers of listed securities independently of and in competition with one another;
- (c) the applicant has sufficient financial resources for the proper exercise or carrying out the powers and duties conferred upon or assigned to a stock exchange by or under this Act; and
- (d) the proposed rules of the applicant comply with the requirements of this Act.”

Substitution of section 9 of Act No. 1 of 1985

4. The principal Act is amended by the substitution for section 9 of the following section:

“Stock exchange licence

9. (1) A stock exchange licence shall expire on 31 December in each year, but may be renewed.

(2) The fee payable for the issue or renewal of a stock exchange licence shall be as prescribed.

(3) If the liability in respect of the issue of a stock exchange licence arises after 30 June in any year, one-half of the prescribed amount shall be payable for such issue.

- (4) A stock exchange licence shall specify -

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- (a) the place at which the business of the stock exchange may be carried on;
- (b) the trading method or facility by means of which the business of the stock exchange may be carried on; and
- (c) that the business shall not be carried on at any other place or in any other manner without the prior approval of the Registrar.

Substitution of section 10 of Act No. 1 of 1985, as amended by section 5 of Act No. 26 of 1992

5. The principal Act is amended by the substitution for section 10 of the following section:

“Refusal of renewal of stock exchange licence

10. (1) The Registrar may refuse to renew a stock exchange licence, if -

- (a) during the year preceding the year for which the licence is to be renewed, the applicant failed -
 - (i) to enforce its rules properly;
 - (ii) to comply with the provisions of this Act or any regulation;
 - (iii) to give effect to a decision of the board referred to in section 21; or
 - (iv) to comply with any written direction, request, condition or requirement of the Registrar in respect of which an appeal had been noted by the Registrar in terms of section 20 and upheld by the board referred to in section 21; or
- (b) section 8(1)(a), (b), (c) or (d) is no longer complied with.

(2) The Registrar shall not refuse to renew a stock exchange licence on any ground, unless the Registrar has, by notice in writing, furnished the applicant with the reasons for his or her proposed refusal and the applicant has had the opportunity to show cause within a period specified in the notice why such renewal should not be refused.”

Amendment of section 11 of Act No. 1 of 1985

6. Section 11 of the principal Act is amended by the deletion of subsections (2), (3), (4) and (5).

Amendment of section 12 of Act No. 1 of 1985

7. Section 12 of the principal Act is amended -

- (a) by the substitution for paragraphs (a), (b), (c) and (d) of subsection (1) of the following paragraphs:

- “(a) that no person is admitted or allowed to continue as a member unless -
- (i) such person is of good character and integrity;
 - (ii) in the case of a corporate body, it is managed and controlled by a board of directors of which -
 - (aa) the directors are of good character and integrity; and
 - (bb) subject to subsection (1A), the managing director and at least 50 per cent of the other directors are Namibian citizens resident in Namibia;
 - (iii) such person, or in the case of a corporate body its managing director, is a stock-broker and complies with such other standards of training and experience and other qualifications as may be required in terms of the rules; and
 - (iv) such person holds and maintains while being a member, such amount of capital or equivalent bank guarantees as shall, subject to section 15, be prescribed by the rules;
- (b) that -
- (i) the capital or guarantee requirements of members are reviewed when appropriate to ensure that risk exposures of a member are adequately covered; and
 - (ii) different capital or guarantees be required from different categories of members or for different activities of a member's business;
- (c) that the manner in and the terms and conditions under which members may trade in listed securities are consistent with efficiency, honesty and fair practice in relation to such trading;
- (d) that the requirements for adequate disclosure of information relating to members' transactions with buyers and sellers of listed securities are consistent with efficiency, honesty and fair practice in relation to such trading;”;

- (b) by the insertion after subsection (1) of the following subsection:

“(1A) The Registrar may, upon application by a member of a stock exchange which is a corporate body, and if good reasons exist, grant approval to that member to appoint a person who is not a Namibian citizen as its managing director for such period as the Registrar may determine.”; and

- (c) by the substitution for subsections (4), (5), (6), (7), and (8) of the following subsections:

“(4) The Registrar shall as soon as **[may be]** possible after he or she has **[granted a certificate authorizing the issue of]** issued a stock exchange licence, cause the rules of the stock exchange concerned to be published in the *Gazette* **[in both official languages and]** at the expense of the stock exchange concerned.

- (5) (a) No **[addition to or alteration]** amendment (other than a suspension) of the rules of **[an association which is the holder of]** a stock exchange **[licence]** shall be valid unless it has been approved by the Registrar, and if he or she approves thereof, such **[addition or alteration]** amendment shall come into operation on a date mentioned in the approval.
- (b) If the Registrar does not disapprove of an **[addition to or alteration]** amendment of the rules referred to in paragraph (a) within a period of two months after the expiry of the period referred to in subsection (7), he or she shall be deemed to have approved thereof, and such **[addition or alteration]** amendment shall come into operation on the day immediately following upon the date of expiry of the aforesaid period of two months.

(6) Upon receipt of an application for his or her approval under subsection (5) the Registrar shall cause to be published at the expense of the association, **[in both official languages]** in the *Gazette*, a notice setting forth the proposed **[additions to or alterations]** amendment of the rules.

(7) The said notice shall call upon all interested persons **[(other than members of the stock exchange concerned)]** who have any objections to the proposed **[additions or alterations]** amendment, to lodge their objections with the Registrar within a period of 30 days from the date of publication of the notice in the *Gazette*.

(8) Whenever **[the Registrar deems]** it is necessary or desirable in the public interest, **[he]** the Registrar may, after consultation with the committee of a **[licensed]** stock exchange and with the consent of the Minister, by notice in the *Gazette* amend **[, add to]** or rescind the rules of such stock exchange with effect from the date immediately following upon the date of publication of the notice or such later date as may be specified therein.”.

Repeal of section 13 of Act No. 1 of 1985

8. Section 13 of the principal Act is repealed.

Substitution of section 15 of Act No. 1 of 1985

9. The principal Act is amended by the substitution for section 15 of the following section:

“Financial requirements in regard to stock exchange members

15. No person shall be admitted or allowed to continue as a member of a stock exchange unless, at the time of such person’s admission and thereafter while such person is authorized under the rules of that exchange to carry on the business of stock-broker, such person has in the Republic assets (other than a loan referred to in section 34(4)(d)) which exceed such person’s liabilities by at least the amount determined by the Minister by notice in the *Gazette* plus, if the provisions of section 12(1)(i) apply to such person, the amount referred to therein.”.

Substitution of section 33 of Act No. 1 of 1985

10. The principal Act is amended by the substitution for section 33 of the following section:

“Issue and renewal of licence to carry on business of carrier against shares

33. (1) A licence to carry on the business of a carrier against shares shall be issued or renewed by the Registrar.

(2) A carrier against shares licence shall expire on 31 December in each year, but may be renewed.

(3) The fee payable in respect of the issue or renewal of a carrier against shares licence shall be as prescribed.

(4) If the liability in respect of the issue of a carrier against shares licence arises after 30 June in any year, one-half of the prescribed amount shall be payable for such issue.”

Substitution of section 39 of Act No. 1 of 1985

11. The principal Act is amended by the substitution for section 39 of the following section:

“Advertising or canvassing relating to buying and selling of securities

39. (1) No person other than a stock-broker, carrier against shares, or an officer or employee of a member of a stock exchange who is so permitted in terms of the rules, or a stock exchange or an employee of a stock exchange shall in any manner or by any means, either for himself, herself or itself or for any other person, directly or indirectly advertise or canvass any business relating to the buying and selling of listed securities.

(2) The committee of a stock exchange may in consultation with the Registrar prescribe the conditions on which such advertising or canvassing may be undertaken and may take such action as it considers necessary, against any person authorized to advertise or canvass by or under subsection (1), in the event of any contravention of such conditions.

(3) Notwithstanding anything to the contrary contained in any law, the Registrar may, if he or she is of the opinion that any advertisement, brochure or other similar document relating to the business of buying and selling of listed securities and proposed to be published or being published by a person authorized to advertise or canvass under subsection (1) or his or her authorized agent is misleading or for any reason objectionable, direct such person -

- (a) not to publish the advertisement, brochure or document;
- (b) to cease the publication of the advertisement, brochure or document; or
- (c) to effect such adjustments as the Registrar thinks fit.”

Insertion of section 45A of Act No. 1 of 1985

12. The principal Act is amended by the insertion after section 45 of the following section:

“Disclosure of information by stock exchange

45A. Notwithstanding the provisions of any other law, a stock exchange may enter into an agreement with any other exchange or organisation of stock exchange supervisors, whether domestic or foreign, to disclose information relating to a security, a person whose securities are listed on a stock exchange, a particular transaction, a member of stock exchange, an officer or employee of such member, if such information is of importance to such exchange or organisation, and the disclosure is not against public interest.”

Short title

13. This Act is called the Stock Exchanges Control Amendment Act, 2000.
