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IP Country Fiche
NAMIBIA



SECTION 1: COUNTRY OVERVIEW

1.1 GENERAL INFORMATION

Capital:	Windhoek
Population:	2.54 million
Currency of government (official) fees:	Namibian dollar (NAD) and South African rand (ZAR)
Language for filing IP applications:	English
GDP per capita:	4.175 (World Bank 2020)
Human Development Index:	0.646 (World Bank 2020)
Main exports:	Diamonds, uranium, lead, zinc, tin, silver and tungsten.
Main imports:	Raw copper, refined petroleum, copper ore, refined copper, and delivery trucks

1.2 INTERNATIONAL IP AGREEMENTS AND CONVENTIONS

Namibia is a contracting state to the following international legal instruments:

- ARIPO¹, both the Banjul Protocol on Marks and the Harare Protocol on Patents and Industrial Designs;
- Beijing Treaty on Audiovisual Performances;
- Berne Convention for the Protection of Literary and Artistic Works;
- Hague Agreement for the International deposit of Industrial Designs;
- Madrid Protocol for the International Registration of Trade Marks;
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh VIP Treaty) (3);
- Paris Convention for the Protection of Industrial Property;

¹ ARIPO: the African Regional Intellectual Property Organization.

- Patent Cooperation Treaty for the international protection of Patents;
- TRIPS² Agreement
- WIPO³ Convention;
- WIPO Copyright Treaty.

Namibia's IP laws are TRIPS-compliant although, in practice, the level of implementation may be different from other countries.

1.3 REGIONAL AGREEMENTS

Namibia is a member of the following regional agreements:

- AfCFTA (the African Continental Free Trade Area)

The Agreement contains a Protocol on IP rights which aims for effective protection and promotion of IP rights in Africa and may therefore have legal implications for Namibia when it comes into legal force.

- SADC (the Southern African Development Community)

SADC has no regional IP agreements, protocols or registration systems in place. It has the SADC Industrialization Strategy and Roadmap (2015-2063) which includes a focus on promoting the use and enforcement of IP rights to encourage research and development and innovation amongst SADC countries.

1.4 LEGAL FRAMEWORK OF IP PROTECTION AVAILABLE IN NAMIBIA

The following IP protection is available in Namibia:

- 1) trade marks: national, regional (ARIPO) and international (Madrid);
- 2) patents: national and regional (ARIPO);
- 3) utility models: national and regional (ARIPO);
- 4) industrial designs: national and regional (ARIPO); and
- 5) copyright and neighbouring rights: national.

1.5 IP REGISTRATION ROUTES

IP protection in Namibia can be secured at three levels: national, regional and international.

² TRIPS Agreement: Agreement on Trade-Related Aspects of intellectual Property Rights the World Trade Organization (WTO).

³ WIPO: World Intellectual Property Organization.

National

The six types of IP mentioned above can be protected directly in Namibia through the Business and Intellectual Property Authority (BIPA).

Regional

Namibia is a contracting party to ARIPO's Banjul Protocol on Marks and the Harare Protocol on Patents and Industrial Designs.

It is therefore possible to register trade marks, patents, utility models and industrial designs either nationally through BIPA or regionally, through ARIPO.

International

Namibia is also a contracting party to the Madrid Protocol and the Patent Cooperation Treaty (PCT). It is therefore possible to register international trade marks designating Namibia through the Madrid System. More information is available at: <https://www.wipo.int/madrid/en/>

Choosing a suitable registration route: trade marks, patents, utility models and industrial designs

A national route is suitable when trade mark protection is required in Namibia only.

A regional route through ARIPO is suitable when multi-country protection of the abovementioned IP rights is required.

An international route is advisable for trade mark protection only, when protection is required in more countries than are covered by the ARIPO regional trade mark system.

Useful information:

Representation

- Foreign applicants whose principal place of business is outside Namibia must appoint a local agent. (For local applicants this is optional.) BIPA accepts signed powers of attorney without any need for notarisation. However, you should check with your IP service provider in case this position changes and also check whether hard copies are necessary or scanned copies sent by email are acceptable. A list of ARIPO representatives (by country) is available at: <https://www.aripo.org/ip-agents/>.

Trade marks

- The Industrial Property Act, 2012 (Act No 1 of 2012) integrates the Banjul and Madrid Protocols into Namibia's intellectual property laws. As a result, ARIPO regional trade marks and Madrid international trade marks are given the same legal protection as trade marks that are registered through the national IP office in Namibia.

Namibia is not a signatory to the Nice Agreement⁴ but uses the Nice Classification. Classifications based on the latest edition of Nice at the time of filing of an application are accepted.

SECTION 2: OVERVIEW OF IP ENFORCEMENT

Namibia is a signatory of the WTO's TRIPS Agreement and its laws are substantially TRIPS-compliant in terms of providing a legal framework for the protection and enforcement of IP rights.

The Business and Intellectual Property Authority (BIPA) is mandated by the Industrial Property Act, 2012 to register trade marks, patents, utility models and industrial designs which, once registered, can be enforced by a rights holder in the courts of Namibia.

A copyright owner can also use the Copyright and Neighbouring Rights Protection Act, 1994 to enforce rights and to bring IP infringers to justice.

In recent years, in collaboration with the Namibian Police Force, BIPA has increased its anti-piracy campaigns and raids of counterfeit goods in different locations around the country.

Despite the BIPA and State efforts to curb IP infringement, rights holders must play a significant role in policing the use of their IP in Namibia. They must constantly check that the industrial and commercial markets in which they sell their goods or services take appropriate action against the infringement of their IP rights by competitors, retailers or street vendors. Namibian Law entitles rights holders to take civil action against infringers to recover their lost revenue and/or to have the infringing products destroyed.

For copyrights, the Copyright and Neighbouring Rights Protection Act provides for conservatory measures that seek to prevent infringements and also to preserve relevant evidence related to an alleged infringement. Civil remedies include damages and court injunctions. Criminal sanctions include the imposition of substantial fines and the possibility of imprisonment. A copyright owner is expected to 'police' their work and take action against infringers of their rights. That means that the rights holder should initiate action such as reporting infringements to the police or customs (in the case of the importation of infringing goods) and also seek the intervention of the courts to fight third parties who infringe their rights.

SECTION 3: TYPES OF AVAILABLE IP PROTECTION

3.1 TRADE MARKS

National, regional, and international trade marks can be registered in Namibia as explained below.

⁴ Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

Benefits of registering a trade mark

- A registered trade mark gives the owner exclusive rights to use it to market their products and services; it gives the owner protection against others using the same mark or a similar mark without authorisation.
- In the long run, a well-maintained trade mark can build the owner's brand and become an asset to their organisation. This can enable them to expand their business by licensing it to others, franchising or obtaining finance.

3.1.1 Who can register a trade mark?

A natural person, a company or any other entity can apply to register a trade mark.

However, a person who does not have their place of business in Namibia needs a professional representative.

3.1.2 What are the registration requirements?

A trade mark application must contain the following:

- a completed trade mark registration form (Form TM1), including the applicant's full details (i.e. name, nationality and physical address) or the full name of the company represented in a special or particular manner or as it appears on its Certificate of Incorporation, and its physical address;
- a list of goods and/or services for the trade mark, based on the Nice Classification;
- 4 printouts of the trade mark: 1 affixed to the application and 3 additional copies on separate sheets;
- priority document, if applicable; certified copy;
- power of Attorney, if represented, simply signed, no legalisation or notarisation is required;
- a transliteration of any foreign characters in the trade mark and a translation, if applicable, depending on the type of trade mark applied for registration;
- prescribed application fees.

After the application has completed formal and substantive examination and the trade mark has been accepted for registration:

- a letter requesting the publication of the application in the Journal, together with the prescribed fee; and
- a letter requesting registration, together with the prescribed fee.

3.1.3 What qualifies for registration?

A sign, symbol or a business identity which helps businesses/undertakings to distinguish/differentiate between the goods or services of one business/undertaking from those of the others.

A trade mark may consist of a device, label, name, signature, word, letter, numeral or any combi-

nation of these, or a container for goods.

The trade mark must be distinctive (i.e. capable of distinguishing the goods or services of one undertaking from the goods or services of another). This means that it must be inherently capable of distinguishing them or that it became capable of distinguishing them through use.

In addition to identifying the commercial source of goods or services, several other trade mark categories exist. Collective marks are owned by an association whose members use them to indicate products with a certain level of quality and who agree to adhere to specific requirements set by the association. Such associations might represent, for example, accountants, engineers or architects. Certification marks are given for compliance with defined standards but are not confined to any membership.

3.1.4 What cannot be registered?

A trade mark cannot be registered if:

- it is incapable of distinguishing the goods or services of one person from those of other persons;
- it is contrary to public order or morality;
- it is inherently deceptive or its use is likely to mislead or deceive the public or other traders, including as regards the geographical origin of the goods or services concerned, or their nature or characteristics;
- it consists exclusively of a sign or indication which serves, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or time or method of production of the goods or rendering of the services;
- it consists exclusively of a sign or indication which has become customary in the current language or amongst bona fide traders for the goods or services concerned;
- it is identical with, or is an imitation of or contains as an element, an armorial bearing, flag or other emblem of, a name of or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organisation or organisation created by an international convention, unless authorised by the competent authority of that State or organisation;
- its use would be likely to cause confusion or would offend any class of person or would be contrary to law;
- the applicant for registration has no bona fide claim to proprietorship or no bona fide intention of using it as a trade mark;
- the application for registration was made in bad faith.

3.1.5 Where can I file an application?

- National trade marks: through the Business and Intellectual Property Authority (BIPA);
- ARIPO, for regional marks
- International, Madrid trade marks: by a country designation through the International Bureau (WIPO).

3.1.6 How much does it cost?

Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Namibia dollar, NAD). Application forms and fees are available through these links: <https://www.bipa.na/downloads/> and <https://www.bipa.na/fees/>.

Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list of agents can be requested from BIPA through this link: www.bipa.na, or you can view a list of ARIPO-accredited IP agents for Namibia through this link: <https://www.aripo.org/ip-agents/>.

Likely overall registration costs

An applicant can expect the cost of registering a trade mark to be in the region of the amounts set out in the table below (in N\$), unless objections and other special circumstances that may increase the costs apply.

Description of Process/Service	Fees for applications by individuals or entities (NAD)
Application fee for mark in one class	600
Application fee for mark in each additional class	480
Fees for claiming priority	200
Request for grounds of refusal	200
Registration and publication fees	500
Certificate of registration fees	100

3.1.7 How long does registration take?

The trade mark registration process may take 12 months from the filing date to complete, assuming that there are no unusual delays and no oppositions. This includes an opposition period of 2 months.

3.1.8 What is the duration of protection?

10 years from the filing date, renewable.

3.2 PATENTS

Namibia Patent Registrations

- National and regional (ARIPO) patents can be registered in Namibia in the following ways.

National

- at BIPA (Business and Intellectual Property Authority).

Regional

- for the Harare Protocol, through ARIPO.

All ARIPO member states except Mauritius and Somalia can be designated in an ARIPO patent application. ARIPO's designation system allows an applicant to choose one, some or all of the remaining 18 member states in a patent application. It is therefore also possible to file an ARIPO patent application in which Namibia (or any other member state) is designated to achieve national patent protection but through a regional registration system.

Choosing between a national or regional patent registration for Namibia

The decision about whether to register a patent in Namibia through the national or ARIPO route is usually guided by the following considerations:

- whether substantive examination is required or not: BIPA carries out both a formal and substantive examination of patent applications;
- whether patent protection is required in Namibia only or in multiple jurisdictions: applicants will usually opt for the ARIPO route if multiple-jurisdiction protection is required;
- cost-effectiveness: ARIPO's centralised regional patent registration system is usually considered to be more cost-effective than a national patent registration approach.

Choosing between registration routes

Most patent applications for Namibia are registered through ARIPO because it allows applicants to designate more than one country. It is more cost-effective to file a single application in ARIPO to gain patent coverage in two or more ARIPO member states.

Choosing a patent filing route

Namibia is a member of the PCT. Patent applications for both the BIPA and ARIPO routes for Namibia can also be filed through the PCT. However, the PCT provides a patent filing rather than a patent registration route.

National (BIPA) Patents

3.2.1 Who can register a patent?

An inventor (or successor in title) or an assignee of an invention can apply to register a patent.

3.2.2 What are the registration requirements?

A patent application must contain the following:

National Phase PCT Application:

- a request on the prescribed form;
- a declaration and power of attorney (Form G2) (simply signed) (This can be filed later, within 60 days.);
- the applicant's details including their full name, nationality, legal status and physical address or, if the applicant is a company, its Certificate of Incorporation;
- specification, patent title, claims and abstract in English (required on the day of filing);
- formal drawings, if applicable (required on the day of filing);
- International Patent Classification (can be filed later, no set deadline);
- the Assignment of Invention (can be filed later, within 60 days);
- a copy of the Published International Application (required on the day of filing);
- a copy of the International Search Report (can be filed later, no set deadline);
- a copy of the International Preliminary Report on Patentability (can be filed later, no set deadline);
- the prescribed application fees;
- when the patent is accepted: a letter of acceptance, together with the publication and grant fees.

Patents of Invention:

- a declaration and power of attorney (Form G2) (simply signed) (can be filed later, within 60 days);
- specification, claims and abstract in English (required on the day of filing);
- formal drawings, if applicable (required on the day of filing);
- the Assignment of Invention (can be filed later, within 60 days).

3.2.3 What qualifies for registration?

A patent must meet the following requirements:

- novelty which must be absolute novelty in that the invention must be a new characteristic which is not known in the body of existing knowledge in its technical field. It must not be anticipated by prior art;
- inventive step which means that, having regard to prior art, the invention is not obvious to a person skilled in the art;
- susceptible of industrial applicability in that it can be used in any kind of industry, including agriculture, and
- patentable invention under national patent law.
- Unregistrable patents in Namibia are those related to the treatment of humans or animals or to pharmaceutical inventions. These inventions are not patentable to avoid undue restrictions to access to medical care and medicines by people or animals in need.

3.2.4 What cannot be registered?

The following inventions cannot be patented:

- discoveries, scientific theories and mathematical methods;
- a literary, dramatic, musical or artistic work or any other aesthetic creation;
- schemes, rules or methods for doing business, performing purely mental acts or playing games;
- programmes for computers;
- presentations of information;
- diagnostic, therapeutical and surgical methods for the treatment of humans or animals;
- plants and animals other than micro-organisms and any essentially biological processes for the production of plants and animals other than non-biological and microbiological processes;
- the human body and all its elements in whole or in part;
- the whole or a part of natural living beings and biological materials found in nature, even if isolated from it or purified, including the genome or germplasm;
- new uses, methods of use, forms and properties of a known product or substance already used for specific purposes, and changes of shape, dimensions, proportions or materials of the subject matter applied for, except where the qualities of the subject matter are essentially altered or where its use solves a technical problem that did not previously have an equivalent solution;
- a new use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

3.2.5 Where can I file an application?

National applications, non-Convention, Convention and PCT national phase applications must be filed at BIPA.

Regional applications can be filed at BIPA or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings.

3.2.6 How much does it cost?

National (BIPA) fees

Registration fees consist partly of government (official) fees and partly of professional fees, as indicated below.

Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Namibian dollar, NAD). Application forms and information on fees are available through this link: <https://www.bipa.na/>.

Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

Likely overall registration costs for a BIPA patent

An applicant can expect the cost of registering a patent to be in the region of the amounts set out in the table below (in N\$), unless objections and other special circumstances that may increase the costs apply.

Type of Fees	BIPA Fees (applications by individuals or entities) (NAD)
Application fee for a patent	500
Registration and publication	1000

ARIPO-route patent registration fees

Fees must be paid through ARIPO and in USD if an applicant chooses to register a patent for Namibia using the ARIPO route. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

Fees that are required at the stage of filing an application as follows:

Type of Fee	ARIPO Fee USD
Application fee, regardless of the number of states designated in the application	232
State designation fee	85 per state (multiplied by the number of designated states)
Mandatory annuity fee: for PCT-based applications, the first ARIPO annuity fee will usually be due and must be paid with the application fee	50 per state (multiplied by the number of designated states)
Total fees, assuming only Namibia is designated and payment of first annuity fee	<u>317</u>
Total fees, assuming all 18 Harare Protocol states, including Namibia, are designated and payment of first annuity fee	<u>2 662</u>

Note on professional fees

Professional fees vary depending on several factors, such as the level of experience of the professional concerned and the time spent on a task, amongst others.

It is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

3.2.7 How long does registration take?

National patent applications are now being examined substantively in Namibia after they have been formally examined by BIPA. Substantive examination is completed on average within 3 years from the filing date of the application. If the applicant does not request the substantive examination within the 3 years, the application is deemed to have been abandoned.

Regional-route Namibia applications are substantively examined by ARIPO and take 3-4 years on average to complete registration, assuming that there are no objections.

3.2.8 What is the duration of protection?

Protection now lasts 20 years from the filing date, subject to the payment of annual maintenance fees. The term of patents granted before 1 August 2018 is 14 years.

3.2.9 When are renewal fees paid?

National patents

Renewal fees are paid from the first anniversary of the filing date up to the 20th year. Late payment is possible, with a corresponding surcharge, within a grace period of 6 months after the due date.

Annuities

The following government (official) fees are currently applicable:

Annuity Year	BIPA Fees (applications by individuals or entities) (NAD)
1	200
2	200
3	200
4	<u>200</u>
5	<u>200</u>
6	<u>200</u>
7	<u>450</u>
8	<u>500</u>
9	<u>550</u>
10	<u>600</u>
11	<u>650</u>
12	<u>700</u>
13	<u>750</u>
14	<u>800</u>
15	<u>850</u>
16	<u>900</u>
17	<u>950</u>
18	<u>1000</u>
19	<u>1000</u>

ARIPO-route Namibia patents

Renewal fees are payable up to the 19th year. Before payment, it is advisable to confirm the amount of the fees on the ARIPO website as the official fees may change. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

ARIPO fees are payable per designated state.

The following ARIPO renewal fees are currently applicable:

Annuity Year	ARIPO Fee (USD)
1 (NB: Due the second year after the filing date)	50
2	70
3	90
4	110
5	130
6	150
7	170
8	190
9	210
10	230
11	250
12	270
13	290
14	310
15	330
16	380
17	430
18	480
19	530
Late renewal fees consist of 2 parts:	
I. Surcharge for late payment of annual maintenance fee	100
II. Penalty fee for each month or fraction of a month for which the fees remain unpaid	50

3.3 UTILITY MODELS

In some jurisdictions utility models are referred to as 'petty patents' because they are similar to patents but require less stringent conditions for registration and are registered for a shorter term than a conventional patent.

Namibia Utility Model Registrations

National and regional (ARIPO) utility models can be registered in Namibia in the following ways.

National

- at BIPA.

Regional

- based on the Harare Protocol, through ARIPO.

All ARIPO member states except Mauritius and Somalia can be designated in an ARIPO utility model application. ARIPO's designation system allows an applicant to choose one, some or all of the remaining 18 member states in a utility model application. It is therefore also possible to file an ARIPO utility model application in which Namibia or any other country is designated to achieve national utility model protection but through a regional registration system. However, it is advisable to ensure that utility model protection is available in each state that is designated because it is doubtful that it would be possible to enforce rights in a designated state that actually does not provide utility model protection in its national laws.

National (BIPA) Utility Models

3.3.1 Who can register?

An inventor or assignee of an invention can apply to register a utility model.

3.3.3 What qualifies for registration?

A utility model qualifies for a utility model certificate if it is new and has industrial applicability.

A registrable utility model means an invention excluding the process, microbiological process and products of a microbiological process.

3.3.4 What cannot be registered?

The following inventions cannot be registered as utility models in Namibia:

- utility models related to the treatment of humans or animals or to pharmaceutical inventions. These inventions are not registrable to avoid undue restriction to access to medical care and medicines by people or animals in need.

- discoveries, scientific theories and mathematical methods;
- a literary, dramatic, musical or artistic work or any other aesthetic creation;
- chemes, rules or methods for doing business, performing purely mental acts or playing games;
- programmes for computers;
- presentations of information;
- diagnostic, therapeutical and surgical methods for the treatment of humans or animals;
- plants and animals other than micro-organisms and any essentially biological processes for the production of plants and animals other than non-biological and microbiological processes;
- the human body and all its elements in whole or in part;
- the whole or a part of natural living beings and biological materials found in nature, even if isolated from it or purified, including the genome or germplasm;
- new uses, methods of use, forms and properties of a known product or substance already used for specific purposes, and changes of shape, dimensions, proportions or materials of the subject matter applied for, except where the qualities of the subject matter are essentially altered or where its use solves a technical problem that did not previously have an equivalent solution;
- a new use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.
- Inventions the commercial exploitation of which would be contrary to public order or morality.

3.3.5 Where can I file an application?

National applications for utility models must be filed at BIPA.

Regional applications can be filed at BIPA or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings. If an applicant wishes to obtain a utility model instead of a patent in Namibia on the basis of an international application, this must be indicated in the international application when filed.

3.3.7 How long does registration take?

National utility model applications are now being examined substantively in Namibia after they have been formally examined by BIPA. Substantive examination is completed on average within 3 years from the filing date of the application. If the applicant does not request the substantive examination within the 3 years, the application is deemed to have been abandoned.

Regional-route filed BIPA applications are substantively examined by ARIPO and take longer than national utility model applications to reach registration. These applications can take 24-36 months to complete registration, assuming that only minimal official actions are needed and there are no objections.

3.3.8 What is the duration of protection?

In Namibia, the duration of utility models is 7 years from the filing date. It is not renewable.

ARIPO-registered utility models have a duration of 10 years from the filing date.

3.4. INDUSTRIAL DESIGNS

Namibia does not classify designs according to whether they are aesthetic or functional designs.

Namibia Industrial Design Registrations

National and regional (ARIPO) industrial designs can be registered in Namibia in the following ways: national, regional and international.

National

- at Business and Intellectual Property Authority BIPA, see below.

Regional

- through the Harare Protocol, through ARIPO.

All ARIPO member states except Mauritius and Somalia can be designated in an ARIPO industrial design application. ARIPO's designation system allows an applicant to choose one, some or all of the remaining 18 member states in an industrial design application.

It is therefore possible to file an ARIPO design application in which Namibia or any other country is designated to achieve national design protection but through a regional registration system.

International

Industrial design protection in Namibia can also be secured internationally by designating Namibia in the Hague System (i.e. the WIPO Hague Agreement Concerning the International Registration of Industrial Designs). More information about this registration system is available through this link: <https://www.wipo.int/hague/en/>.

Choosing between a national or regional industrial design registration for Namibia

The decision about whether to register a design in Namibia through the national or ARIPO route is usually guided by the following considerations:

- whether design protection is required in Namibia only or in multiple jurisdictions: applicants will usually opt for the ARIPO route if multiple-jurisdiction protection is

- required;
- cost-effectiveness: ARIPO's centralised regional design registration system is usually considered to be more cost-effective than a national design registration approach;
- time-effectiveness: Time-conscious applicants usually tend to prefer to register their designs through the ARIPO route instead of the national route.

Examination and novelty of designs for Namibia

Industrial designs in Namibia are subjected to both a formal and a substantive examination. Applications are examined for compliance with the formal requirements. If the Registrar is satisfied with the formal examination, a substantive examination will be carried out to see whether the design is new. This examination is based on a relative statement of novelty.

Similarly, ARIPO carries out a formal examination of designs, but member states are given the opportunity to carry out a substantive examination if their national laws require it.

As there is no requirement for a substantive examination of designs under Namibian law, only a formal examination is carried out.

National (BIPA) Industrial Designs

3.4.1 Who can register?

A creator or assignee of an industrial design can apply to register a design in Namibia.

It is possible for two or more persons or companies to jointly own and apply for the registration of an industrial design.

3.4.3 What qualifies for registration?

An industrial design is registrable if it is new and meets the legal requirements for a design.

A design is considered new if it has not been disclosed to the public anywhere in the world, except if disclosure occurred within 12 months from the filing date.

The legal requirements are that an industrial design must be – in respect of any feature or combination of features of form or shape or configuration, or any feature or combination of features of pattern or ornamentation, including any composition of lines or colours – applied to an article to give it an appearance with such features visible to the eye, but not including any feature that is solely to obtain a functional or technical result.

For a creation to qualify for design registration it must clearly identify novel features of the design in terms of:

- any feature or combination of features of form;

- shape;
- configuration;
- pattern and/or ornament.

Multiple design applications are possible in Namibia, provided that all the designs are embodied in a single set of articles and belong to the same class.

3.4.4 What cannot be registered?

The following cannot be registered:

- designs that are contrary to the law, public policy or morality;
- A design for an article which is not intended to be multiplied for commercial purposes is not registrable.
- designs for articles that are primarily literary or artistic in character, such as paintings, sculptures, drawings, enamelling, engravings, embroidery, photographs, sculptures, architecture and works of artistic craftsmanship;
- designs consisting solely of a change in the colour of already known designs;
- designs whose features correspond to or are determined by functions to be performed by the products.

3.4.5 Where can I file an application?

National-route design applications must be filed at BIPA.

Regional-route design applications can be filed at BIPA or, clearly indicating that they are regional applications, through ARIPO. Applications filed through ARIPO for Namibia designs can be filed electronically, by email, registered mail, fax, by courier or in person. Online ARIPO application fees have a 20 % discount to encourage online filings.

International: If you want to register your design abroad to obtain protection in other territories, the Hague System for the International Registration of Industrial Designs administered by WIPO provides a centralised registration system where you can file electronically in a single application up to 100 designs, and designate over 66 territories; you could then use this to claim priority in future filings.

Namibia is a contracting party to the Hague Agreement. Any individual or business in Namibia can file an international application either with BIPA or directly with WIPO under the Hague System. More information is available through this link: https://www.wipo.int/hague/en/how_to/file/.

3.4.6 How much does it cost?

National (BIPA) fees

Registration fees consist partly of government (official) fees and partly of professional fees, as indicated below.

Government (official) fees

The fee schedule is published in a statutory instrument. Both local and foreign applicants may pay these fees using the local currency (Namibia dollar, NAD). Application forms and information on fees are available through this link: <https://www.bipa.na/fees/>.

Professional fees

Professional fees vary so it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

Likely overall registration costs for a BIPA industrial design

An applicant can expect the cost of registering an industrial design to be in the region of the amounts set out in the table below (in N\$), unless objections and other special circumstances

Annuity Year	BIPA Fees (applications by individuals or entities) (NAD)
Application fee for single design	200
Application fee for each additional design in a multiple design application	50
Registration and publication fees	150
Certificate of registration	100

which increase costs apply.

ARIPO-route design registration fees

These fees are paid through ARIPO. ARIPO's fees are reviewed regularly. The latest fees are available through this link: <https://www.aripo.org/fee-schedules/>.

Application fees, are as follows:

Type of Fee	ARIPO Fee (USD)
Application fees, regardless of the number of states designated in an application	40
State designation fees	10 per state (multiplied by the number of designated states)
Total fees, assuming that only Namibia is designated in the application	50
Total fees, assuming that all 18 Harare Protocol states, including Namibia, are designated in the application	220

Note on professional fees

Professional fees vary and it is advisable to obtain comparative quotes of fees from at least three ARIPO-accredited professionals. A list is available through this link: <https://www.aripo.org/ip-agents/>.

3.4.7 How long does registration take?

National-route applications: applicants for the registration of designs are given 1 year from the date of application to complete registration. An extension of 3 months may be granted.

Regional-route applications usually take 8 -12 months to complete registration. This includes a period of 6 months for states to examine and decide if a design will have legal effect in their territories after ARIPO has issued them with a notice of intention to register a design.

3.4.8 What is the duration of protection?

A BIPA industrial design has an initial duration of 5 years from the filing date, with the possibility

of two further consecutive 5-year terms, a total of 15 years.

ARIPO-route design registrations are valid for 10 years, with no possibility of extension.

3.4.9 When are renewal fees paid?

Renewal fees must be paid within 6 months after the due date.

The renewal fees are currently NAD 100 for the first renewal extending the duration of the design from 5 to 10 years, and NAD 100 for the second and final renewal extending the duration from 10 to 15 years.

In ARIPO, renewal fees are payable within the 6 months before the registration period expires. Late payment of the renewal fees is possible within a grace period of 6 months after the due date. The late payment fee is currently NAD 200.

Professional services renewal fees

These are usually payable as a flat-rate fee per annuity payment, regardless of the number of designated states. It is advisable to compare the fees of different IP agents.

3.5. GEOGRAPHICAL INDICATIONS (GIs)

Geographical indications are indications that identify a product as originating in the territory of a member state, or a region or locality in that territory, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin (Article 22(1) of the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights).

Agricultural products, for example, typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. A geographical indication usually includes the name of the place of origin of the products.

Namibia does not have a sui generis legal instrument for the protection of geographical indications. However, a product can be protected by registering it as a collective mark under the existing Industrial Property Act, 2012. Namibia is engaged in discussions at both regional and global levels to find the best possible means to protect geographical indications.

3.8. COPYRIGHT AND NEIGHBOURING RIGHTS

Namibia has many famous traditional dance styles which include the Ukambe, Kambamba and Nondere. These dance styles are unique, rhythmic, and expressive. Apart from for entertainment, they are also used for healing and storytelling.

About Copyright and Neighbouring Rights in Namibia

Namibia has a dedicated law for the protection of copyright and neighbouring rights, namely the

Copyright and Neighbouring Rights Protection Act 6 of 1994.

Namibia is also a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. However, it has not yet ratified these Treaties.

3.8.1 Can I register?

Copyright is not a registrable right in Namibia. It exists automatically when any original work is created in one of the categories that is protected by the Copyright and Neighbouring Rights Protection Act 6 of 1994.

Namibia is a member ARIPO which is currently considering the possibility of creating a voluntary copyright registration system for its Member States. It remains to be seen if this system will become a reality.

3.8.2 What qualifies for protection?

Any original work in the categories listed below qualifies for protection:

- literary works
- musical works;
- artistic works;
- cinematograph films;
- sound recordings;
- broadcasts;
- programme-carrying signals;
- published editions;
- computer programs.

3.8.3 What cannot be protected?

- any work whose subject matter that does not qualify for legal protection;
- any work whose author is not Namibian by:

- 1) citizenship;
- 2) domicile; or
- 3) by virtue of being incorporated in Namibia;

- any work that is contrary to law, public order, or morality;
- the official text of any work of a legislative, administrative or legal nature, or an official translation thereof;
- a speech of a political nature or a speech delivered in the course of judicial proceedings;
- publications or broadcasts of news of the day.

3.8.5 What are examples of acts permitted in relation to copyright works?

Permitted acts that do not infringe copyright include:

fair dealing in the use of a literary or musical work -

- (a) for the purpose of research or private study by, or the personal or private use of, the person using the work;
- (b) for the purpose of criticism or review of the work or of another work; or
- (c) for the purpose of reporting on a current event:

(I) in a newspaper, magazine or similar periodical;

or

(II) by means of broadcasting or in a cinematograph film,

- educational use;
- use of work for judicial proceedings;
- the source and the name of the author, if that name appears on the work, are mentioned.
- work in a broadcast that is destroyed within 6 months immediately following the making of the reproduction, or a longer period agreed to by the owner of the relevant part of the copyright in the work;
- copies made to replace or conserve library or archival copies of works;
- use of anonymous or pseudonymous works, subject to conditions;
- quotations from copyright works;
- public readings and recitations.

3.8.6 What acts are not permitted in relation to copyright works?

Unpermitted/restricted acts include:

- reproducing the work;
- publishing the work;
- importing the work into Namibia or exporting it from Namibia, otherwise than for personal and private use;
- causing the work to be transmitted in a cable programme service, unless the service transmits a lawful broadcast and is operated by the original broadcaster;
- making an adaptation of the work.

3.8.7 What is the duration of protection?

The duration of copyright protection (is as follows:

- literary works: the lifetime of the author (or last surviving author in the case of co-authored works) plus 50 years;
- a cinematography work, a photograph, or a computer program: 50 years from the end of the year in which the cinematography, photography or computer program was made available to the public e;
- a sound recording or published: 50 years from the end of the year in which the recording or published edition was first published;

- a broadcast: 50 years from the end of the year in which the broadcast first took place;
- a programme-carrying signal: 50 years from the end of the year in which the signal was first emitted to a satellite;

3.8.8 Can I renew copyright after its term of protection expires?

Copyright cannot be renewed in Namibia once its term has expired. The work lapses into the public domain at the end of the term of protection.

Links to legislation:

ARIPO: <https://www.aripo.org/member-states-laws/>

Links to institutions:

AfCFTA – African Continental Free Trade Areas Secretariat : <https://au.int/en/cfta>

ARIPO – African Regional Intellectual Property Organization: <https://www.aripo.org/>

BIPA Business and Intellectual Property Authority: <https://www.bipa.na/>

SADC – Southern African Development Community: <https://www.sadc.int/>

