

# COMPANIES (AMENDMENT) ACT, 2018

No. 22



of 2018

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**An Act to amend the Companies Act.**

*Date of Assent:* 29.06.2018

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

Short title and commencement

**1.** This Act may be cited as the Companies (Amendment) Act, 2018, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Amendment of section 2 of Cap. 42:01

**2.** The Companies Act (in this Act referred to as “the Act”) is amended in section 2 by —

(a) inserting in its correct alphabetical order, the following new definition —

“beneficial owner” means a natural person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, is the ultimate beneficiary of a share or other securities in a company;”;

(b) deleting the definition of “dormant company”.

Amendment of section 3 of the Act

**3.** Section 3 of the Act is amended by substituting for that section, the following new section —

“Public notice **3.** Where, pursuant to this Act, a public notice is required to be given of any matter affecting a company, that notice shall be given by publishing notice of the matter in —

(a) the *Gazette*;

(b) a newspaper with wide circulation in Botswana; or

(c) any other medium in Botswana, as the Registrar may consider necessary.”.

Amendment of section 11 of the Act

**4.** Section 11 of the Act is amended —

(a) in subsection (1), by deleting subsection (c);

(b) by inserting immediately after subsection (1), the following new subsections —

“(1A) The Registrar may request in writing, from any person, any information as the Registrar considers necessary to enable him to carry out the maintenance of the register.

(1B) A request for information under subsection (1A) shall —

(a) specify the nature and type of information sought by the Registrar in sufficient detail as shall enable the person to identify and provide the information; and

(b) specify the format and period within which the required information is to be submitted.

(1C) Upon receipt of a request for information, the person to whom the request is made shall, at the Registrar’s option as set out in the request and within the time specified in the request, give the Registrar the information so requested or provide a copy of such information.”.

Amendment of section 13 of the Act

**5.** Section 13 of the Act is amended —

(a) by substituting for subsection (1), the following new subsection —

“(1) A person may inspect —

(a) any document that constitutes part of the register of companies or the register of external companies;

- (b) particulars of any registered document that have been entered on any device or facility referred to in section 11(2); or
  - (c) any registered document particulars of which have been entered on any device or facility referred to in section 11(2).”; and
- (b) by deleting the words “, on payment of the prescribed fee” appearing in subsection (2).

**6. Section 21 of the Act is amended —**

- (a) in subsection (1) (d), by substituting for —
  - (i) subparagraph (i), the following new subparagraph —
    - “(i) in the case of a company having a share capital, a document in the prescribed form, signed by every person named as a shareholder or by an agent of the shareholder authorised, in writing, containing the person’s consent to be a shareholder and to taking the number of shares specified in the document,”; and
  - (ii) subparagraph (iii), the following new subparagraph —
    - “(iii) in the case of a company limited by guarantee, a document signed by each person named as a member or by an agent of the member authorised in writing, containing that person’s consent to be a member, or”;
- (b) by deleting subsections (1) (e), (3), (4) and (5); and
- (c) in subsection (2), by substituting for paragraph (c) the following new paragraph —
  - “(c) the full name and residential address of —
    - (i) every shareholder or member of the proposed company, and in the case of a company limited by shares, the number of shares to be issued to every shareholder and the amount to be paid or other consideration to be provided by that shareholder for the issue of those same shares, and
    - (ii) beneficial owners of the company;”; and
- (d) inserting immediately after subsection (2), the following new subsection —
  - “(2A) Where a company fails to comply with subsection (2) —
    - (a) the company shall be guilty of an offence and liable to a penalty set out in section 492 (4); and
    - (b) every director of the company shall be guilty of an offence and liable to a fine set out in section 492 (2).”.

Amendment of section 21 of the Act

**7. The Act is amended by inserting immediately after section 31, the following new section —**

- “Delegation of power to dispense with “Limited” 31A. (1) The Minister may, in writing, delegate any of his powers under section 31 to the Registrar.
- (2) Notwithstanding any delegation under subsection (1), the Minister may —

Insertion of section 31A in the Act

- (a) exercise any powers delegated by him and may from time to time cancel or vary such delegation; and
- (b) vary or set aside any decision made by Registrar in the exercise of such delegated powers.

(3) A power delegated under this section may, where the instrument of delegation so provides, be further delegated.”.

Amendment of section 34 of the Act

**8.** Section 34 of the Act is amended —

(a) in subsection (1), by —

- (i) deleting paragraph (b), and
- (ii) substituting for paragraph (c), the following new paragraph —

“(c) subject to the constitution of the company, be made by a director of the company or any other person authorized by the board of the company.”; and

(b) by substituting for subsection (3), the following new subsection —

“(3) The Registrar shall not enter a change of name in the register until 14 days after the Registrar has issued a public notice of the application to change the name of the company.”.

Amendment of section 37 of the Act

**9.** Section 37 of the Act is amended by substituting for that section, the following new section —

“No requirement for company to have constitution 37. A company shall not be required to have a constitution, unless the company is a company limited by guarantee.”.

Amendment of section 48 of the Act

**10.** Section 48 of the Act is amended by —

(a) substituting for subsection (3A), the following new subsection —  
“(3A) A company that transfers a share in the company shall, in such form as may be prescribed and within 20 days from the date the transfer is made, notify the Registrar of the transfer.”; and

(b) inserting immediately after subsection (3A), the following new subsection —

“(3B) Where a company fails to comply with subsection (3A) —

(a) the company shall be guilty of an offence and liable to a penalty set out in section 492 (1); and

(b) every director of the company shall be guilty of an offence and liable to a fine set out in section 492 (2).”.

Amendment of section 50 of the Act

**11.** Section 50 of the Act is amended in subsection (4), by substituting for paragraph (a), the following new paragraph —

“(a) give notice to the Registrar, in the prescribed form, of the number of shares issued;”.

Amendment of section 55 of the Act

**12.** Section 55 of the Act is amended by substituting for subsection (1), the following new subsection —

“(1) Where a call is made on a share or any other obligation attached to a share is performed by the shareholder, the company shall, within 10 working days of the call being made, give notice, in the prescribed form, to the Registrar of the amount of the stated capital of the company following the making of the call.”.

**13.** Section 59 of the Act is amended by —

- (a) deleting subsection (6); and
- (b) deleting the words “or subsection (6)” appearing in subsection (7).

Amendment of section 59 of the Act

**14.** Section 66 of the Act is amended by —

- (a) substituting for subsection (5), the following new subsection —  
“(5) Save as provided under subsections (10) and (11), a company that proposes to acquire shares that are issued by it shall deliver or mail a copy of the written offer or circular to each shareholder on record as at the date of the offer, in such manner as may be provided in the constitution of the company for sending any notice of meeting to shareholders —
  - (a) stating the number of its issued shares which the company proposes to acquire;
  - (b) specifying the terms and reasons for the offer; and
  - (c) providing the disclosure required by subsection (12).”; and
- (b) substituting for subsection (8), the following new subsection —  
“(8) A company that acquires shares issued by it shall, in such form as may be prescribed and within 30 days from the date the shares are acquired, notify the Registrar of the date and number of shares that it has acquired.”.

Amendment of section 66 of the Act

**15.** Section 81 of the Act is amended by inserting immediately after subsection (4), the following new subsection —

“(4A) A company that transfers a share in the company shall, in such form as may be prescribed and within 20 days from the date the transfer is made, notify the Registrar of the transfer.”.

Amendment of section 81 of the Act

**16.** Section 145 of the Act is amended by substituting for that section, the following new section —

“Number of directors 145. A company shall have at least —

- (a) two directors, if it is a public company;
- (b) one director, if it is a private company other than a close company; or
- (c) one director, if it is a foreign company or a company limited by guarantee, ordinarily resident in Botswana.”.

Substitution of section 145 in the Act

**17.** Section 162 of the Act is amended in —

- (a) subsection (3), by substituting for the words “Botswana Institute of Accountants” appearing in paragraph (a), the words “Botswana Institute of Chartered Accountants”; and
- (b) subsection (4), by inserting immediately after the word “secretaries”, the words “which shall consist of persons qualified under subsection (3) (a)”.

Amendment of section 162 of the Act

Amendment of section 191 of the Act

**18.** Section 191 of the Act is amended by inserting immediately after subsection (1), the following new subsection —

“(1A) A public company and a non-exempt private company shall, where it appoints an auditor under subsection (1) and within 20 days from the date the appointment is made, deliver to the Registrar, in such form as may be prescribed, a notice of the appointment of the auditor.”.

Substitution of section 217 in the Act

**19.** Section 217 of the Act is amended by substituting for that section, the following new section —

“Annual return 217. (1) A company shall, in such form as may be prescribed, at least once in every year, deliver an annual return to the Registrar.

(2) Notwithstanding subsection (1), a company may not deliver an annual return in the same year of its incorporation.

(3) A company shall, in terms of this section, deliver its first annual return to the Registrar in the following year, on the month of its registration and such month shall be deemed to be the month in which the annual return of the company becomes due to be delivered to the Registrar, for the succeeding years.

(4) Notwithstanding subsection (3), a company incorporated in —

(a) January of a particular year, shall deliver its annual return in February of the succeeding year; and

(b) December of a particular year, shall deliver its annual return in November of the succeeding year.

(5) A director or secretary of a company who fails to comply with the provisions of subsection (1), commits an offence and is liable to the penalty set out in section 493 (2) of this Act.

(6) A company which fails to comply with the provisions of subsections (1) and (3), shall immediately be removed from the register.”.

Amendment of section 248 of the Act

**20.** Section 248 of the Act is amended by substituting for subsection (4), the following new subsection —

“(4) The application shall state, in addition to the matters referred to in section 21 —

(a) the size, expressed as a percentage, of each member’s interest in the company; and

(b) the name and address of the person or firm which has consented in writing to be appointed as accounting officer of the close company pursuant to section 273.”.

**21.** Section 250 of the Act is amended by substituting for that section, the following new section —

Substitution of  
section 250  
of the Act

“Contributions  
by members

250. (1) Every person who is to become a member of a close company upon its registration, shall make to the company an initial contribution of money, property, or services rendered in connection with and for the purposes of the formation and incorporation of the company.

(2) The amount or value of the members’ contributions, or of the contribution of any one or more members, may from time to time by agreement among all the members —

(a) be increased by additional contributions of money or property to the close company by existing members or, in terms of section 255 (1) (b), by a person becoming a member of a registered corporation; or

(b) be reduced, provided that a reduction by way of a repayment to any member shall comply with the provisions of section 258 and 259.

(3) Money or property referred to in subsection (2) (a) shall, in order to vest ownership thereof in the close company, be paid, delivered or transferred, as the case may be, to the company within a period of 90 days —

(a) after the date of registration of the company; or

(b) after the date of the registration of any notice of additional contribution referred to in section 261.

(4) An undertaking by a member to make an initial or an additional contribution to a corporation shall be enforceable by the close company in legal proceedings.”.

**22.** Section 252 of the Act is amended by substituting for that section, the following new section —

Substitution of  
section 252 in  
the Act

“Deregistration of  
close companies

252. (1) The Registrar shall, subject to the provisions of this section, deregister a close company —

(a) if the company has ceased to carry on business or is not in operation;

(b) if the company has been put into liquidation and —  
(i) no liquidator is acting, or  
(ii) the notice referred to in section 427 has not been given to the Registrar within six months after the liquidation of the company is completed;

(c) if a request, in such form as may be prescribed, is sent or delivered to the Registrar that the company be deregistered on any of the grounds specified in subsection (2) by —

- (i) a member authorised to make the request by a special resolution of members entitled to vote and voting on the question,
    - (ii) a member or any other person, if the constitution of the company so requires or permits, or
    - (iii) the Master;
  - (d) if a liquidator notifies the Master in terms of section 426 (3) that no quorum was present at a meeting called to confirm the account; or
  - (e) if the company has failed to comply with the requirements of this Act.
- (2) A request to deregister a company under subsection (1) (c) shall be —
- (a) made on the grounds that the company —
    - (i) has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its constitution and this Act; or
    - (ii) after paying its debts in full or in part has no surplus assets, and no creditor has applied to the court on grounds under section 369 for an order putting the company into liquidation; and
  - (b) accompanied by a written notice from the Commissioner of Taxes stating that the Commissioner has no objection to the company being deregistered.
- (3) The Registrar shall deregister a company under subsection (1) (a), if —
- (a) the Registrar has complied with section 332;
  - (b) the company has not satisfied the Registrar that it is carrying on business or that reasons exist for the company not to continue in existence; and
  - (c) the Registrar —
    - (i) is satisfied that no person has objected to the deregistration of the company under section 334, or
    - (ii) has received an objection to the deregistration and has complied with section 335.
- (4) Where the Registrar decides to deregister a company under subsection (1) (b), (c), (d) or (e), the Registrar shall give notice to the company under section 332 of this Act and shall deregister the company upon satisfying himself that —
- (a) no person has objected to the deregistration under section 334; and
  - (b) where an objection to the deregistration has been received, that the provisions of section 335 have been complied with:
- Provided that de-registration of a company under subsection (1) (e) on the grounds in section 217 (6), shall not require such notice.

(5) Subject to the provisions of this section, the deregistration of a close company shall not affect any liability of a member of the company to the company or to any other person, and such liability may be enforced as if the company were not deregistered.

(6) If a company is deregistered while having outstanding liabilities, the persons who are members of such company at the time of deregistration shall be jointly and severally liable for such liabilities.

(7) The Registrar may, on application made by an interested party in such form as may be prescribed, restore a company deregistered in terms of this section, where the interested party proves to the satisfaction of the Registrar that —

- (a) the company was at the time of its deregistration carrying on business and was in operation; or
- (b) it is otherwise just that the registration of the company be restored.”.

**23.** Section 273 of the Act is amended by substituting for subsection (2), the following new subsection —

Amendment of section 273 of the Act

“(2) The appointment of an accounting officer of a close company shall take effect on the date of registration of the close company or on any date thereafter:

Provided that a close company shall, in the prescribed form and within 20 days from the date the appointment is made, notify the Registrar of such appointment.”.

**24.** Section 277 of the Act is amended by inserting immediately after subsection (3), the following new subsection —

Amendment of section 277 of the Act

“(4) A company limited by guarantee shall, forthwith after its conversion from a company limited by shares, give notice in writing of the conversion to all creditors of the company at the time of conversion, and to all other parties to contracts or legal proceedings in which the company was involved at the time of the conversion.”.

**25.** Section 278 of the Act is amended —

Amendment of section 278 of the Act

(a) by substituting for subsection (3), the following new subsection —

“(3) The application for a conversion under subsection (2) shall state —

- (a) the size, expressed as a percentage, of each member’s interest in the close company; and
- (b) the name and address of the person appointed to be the accounting officer of the close company.”;

(b) by substituting for subsection (4), the following new subsection —

“(4) Where the provisions of subsections (2) and (3) have been complied with, the Registrar shall, if he is satisfied that the company concerned has complied materially with the requirements of this Act, register the company as a close company and —

Amendment of  
section 279 of  
the Act

- (a) issue to the company a new certificate of incorporation confirming the conversion;
  - (b) cancel the previous certificate of incorporation; and
  - (c) give public notice of the conversion.”; and
- (c) by deleting subsection (6).

**26.** Section 279 of the Act is amended —

- (a) by substituting for subsection (1), the following new subsection —  
“(1) A close company may be converted into a private company limited by shares if —
- (a) all the members agree, in writing, to convert the company into a private company; and
  - (b) each member agrees, in writing, to take up a specified number of shares.”;

(b) by deleting paragraph (a) in subsection (3);

(c) by substituting for subsection (4), the following new subsection —  
“(4) Where the provisions of subsections (2) and (3) have been complied with —

(a) the Registrar shall, if he is satisfied that the company concerned has complied materially with the requirements of this Act, register the company as a close company and —

- (i) issue to the company a new certificate of incorporation confirming the conversion,

- (ii) cancel the previous certificate of incorporation, and
- (iii) give public notice of the conversion; and

(b) the company shall, forthwith after its conversion from a close company, give notice in writing of the conversion to all creditors of the company at the time of conversion, and to all other parties to contracts or legal proceedings in which the company was involved at the time of the conversion.”; and

(d) by deleting subsection (5).

**27.** Section 280 of the Act is amended —

(a) by deleting subsection (3); and

(b) by substituting for subsection (4), the following new subsection —  
“(4) Where a company has complied with the provisions of subsections (1) and (2),

(a) the Registrar shall —

- (i) issue to the company a new certificate of incorporation in the prescribed form, confirming the conversion,

- (ii) cancel the previous certificate of incorporation, and
- (iii) give public notice of the conversion; and

(b) the company shall, forthwith after its conversion from a private company or public company as the case may be, give notice in writing of the conversion to all creditors of the company at the time of conversion, and to all other parties to contracts or legal proceedings in which the company was involved at the time of the conversion.”.

Amendment of  
section 280 of  
the Act

- 28.** Section 331 of the Act is amended in subsection (1) by inserting immediately after paragraph (e), the following new paragraph —  
“(f) the company has failed to comply with the requirements of this Act.”
- Amendment of section 331 of the Act
- 29.** Section 333 of the Act is amended by inserting immediately after subsection (4), the following new subsection —  
“(5) If a company is to be removed from the register under section 217 (6), the Registrar may remove such company from the register without giving any notice and subsection (4) shall not apply.”
- Amendment of section 333 of the Act
- 30.** Section 341 of the Act is amended by substituting for subsection (3), the following new subsection —  
“(3) The Registrar shall, prior to restoring a company to the register, publish a public notice setting out —  
(a) the name of the company;  
(b) the name and address of the applicant;  
(c) the section under, and the grounds on which, the application is made or the Registrar proposes to act, as the case may be; and  
(d) the date by which an objection to restoring the company to the register shall be delivered to the Registrar, not being less than 20 working days after the date of notice.”
- Amendment of section 341 of the Act
- 31.** Section 345 of the Act is amended —  
(a) in subsection (1) by substituting for paragraph (c), the following new paragraph —  
“(c) a list of the external company’s —  
(i) directors containing similar particulars with respect to directors as are by this Act required to be contained in the register of the directors, managers and secretaries of the company,  
(ii) shareholders and the number of shares issued to each shareholder, and  
(iii) beneficial owners and address of each beneficial owner;” and  
(b) inserting immediately after subsection (2), the following new subsection —  
“(2A) Where a company fails to comply with subsection (1) —  
(a) the company shall be guilty of an offence and liable to a penalty set out in section 492 (4); and  
(b) every director of the company shall be guilty of an offence and liable to a fine set out in section 492 (2).”
- Amendment of section 345 of the Act
- 32.** Section 347 of the Act is amended by —  
(a) substituting for subsection (1), the following new subsection —  
“(1) An external company shall, within one month, lodge with the Registrar the particulars of the change or alteration, where a change or alteration is made in —  
(a) the constitution, charter, statutes, memorandum or articles or other instrument lodged;
- Amendment of section 347 of the Act

- (b) the directors;
  - (c) shares or shareholders;
  - (d) the authorised agents or the address of an authorised agent;
  - (e) the situation of the registered office in Botswana or of the days or hours during which it is open and accessible to the public;
  - (f) the address of the registered office and its place of incorporation or origin;
  - (g) the name of the company; or
  - (h) the powers of any directors resident in Botswana who are members of the local board of directors.”; and
- (b) inserting immediately after subsection (2), the following new subsection —
- “(2A) Where a company fails to comply with subsections (1) and (2) —
- (a) the company shall be guilty of an offence and liable to a penalty set out in section 492 (1); and
  - (b) every director of the company shall be guilty of an offence and liable to a fine set out in section 492 (2). ”.

Deletion of  
Part XXVIII  
of the Act

**33.** The Act is amended by deleting Part XXVIII of the Act.

Amendment of  
section 493 of  
the Act

**34.** Section 493 of the Act is amended by inserting immediately after the word “director” wherever it appears in the section, the words “or secretary”.

Amendment of  
section 528 of  
the Act

**35.** Section 528 of the Act is amended in subsection (2) by inserting immediately after paragraph (e), the following new paragraph —

“(f) prescribe anything required to be prescribed under this Act.”.

PASSED by the National Assembly this 12th day of April, 2018.

BARBARAN. DITHAPO,  
*Clerk of the National Assembly.*