

RECENT AMENDMENTS TO THE BOTSWANA COMPANIES ACT

The Companies (Amendment) Act of 2025 in Botswana, which commenced on January 24, 2025, introduces several significant changes to the Companies Act. Key amendments include mandatory company constitutions for all companies, and a 12-month compliance period for companies without constitutions. The Act also amends various sections of the Companies Act, such as sections 2, 37, 109, and 129, and inserts new sections. These changes aim to enhance corporate governance, transparency, and regulatory compliance. The Act now requires all companies to have a constitution in a prescribed form.

Mandatory Company Constitutions

The Act now requires all companies to have a constitution in a prescribed form. Previously, companies could operate without a constitution and would be governed solely by the Companies Act. The amendment suggests that companies without a constitution must adopt the prescribed version set out in the Schedule to the Act. Companies have been given 12 (Twelve) months from the Commencement Date, to comply with this requirement.

Private Companies to File Financial Statements

Private companies are now required to file financial statements with the Registrar of Companies.

- Exempt private companies (those with (i) total assets of less than P5,000,000 and (ii) annual turnover of less than P10,000,000 in the preceding financial year) must file financial statements in a prescribed form.
- Non-exempt private companies (those with (i) total assets exceeding P5,000,000 and (ii) annual turnover exceeding P10,000,000, in the preceding year) must file financial statements, any group financial statements (in the form prescribed for public companies under the Act), and an auditor's report.
Previously, this requirement only applied to public companies, companies in which a public company holds more than 25% of the share capital, or companies required by law to submit financial statements to the Registrar.

Licensing of Company Secretaries

Company secretaries must now be licensed by the Registrar of Companies (in a manner to be prescribed) before being appointed. Previously, a company secretary only needed to meet the qualification requirements set out in the Act and consent to the appointment. Companies have 24 (Twenty-Four) months from the Commencement Date, to comply with this requirement.

New Provisions Relating to Nominee Directors and Shareholders

The amendment introduces new definitions for the terms "Nominee" and "Nominator":

- A nominee is defined as an individual or legal entity instructed by another to act on their behalf in relation to a company.
- A nominator is defined as an individual, group, or legal entity issuing instructions (directly or indirectly) to a nominee to act as a director or shareholder. This includes shadow directors and silent partners.
Nominee shareholders and directors must disclose their nominee status and the identity of their nominator to the Registrar, which will be recorded in the register. Additionally, nominees must disclose their status to any competent authority upon request, and any changes to this information must be reported to the Registrar within 10 (ten) days.

Registrar Empowered to Exchange Company Information

The Registrar of Companies is now authorized to exchange company information including basic details, beneficial ownership records, and nominee-nominator information, with foreign corporate registries or competent authorities.

Maintenance of Beneficial Ownership Records

All companies must now maintain an up-to-date record of beneficial ownership information, including details of any shareholder companies registered outside Botswana. Companies must update this record and notify the Registrar within 10 (Ten) days of any changes. Failure to comply is an offence punishable under the Act.

Trading After Removal from the Company Register

The amendment makes it an offence for a company that has been removed from the register to continue trading.

Other Key Changes

- The threshold for substantial shareholders under Section 329 of the Act has increased from 5% to 10%.
- Companies that have been removed from the register for more than five years may not be restored.
- Companies removed from the register for failing to pay annual returns may be restored within seven days of payment.

If you need assistance in understanding how these amendments affect your business please get in touch with our on +267 71601373 or venu@venuconsulting.co.bw.