

Key features of the Companies (Amendment) Act, 2022

Effective 25 February 2022

The Companies (Amendment) Act, 2022 was assented by the Parliament of Botswana on 25 February 2022 and became effective on the same date. Summarized below are key features of the amendments.

Beneficial ownership details to be provided and made public

Constitution made mandatory for all companies - additional information to be provided

Maintenance of share register

Maintenance of records - period aligned to FIA

Increased penalties

Beneficial ownership details to be provided and made public

1. The most significant update has been the alignment to the Financial Intelligence Act (FIA) and thereby the requirement to provide all Beneficial Ownership (BO) details to Companies and Intellectual Property Authority (CIPA). Thus, all information so provided for both new companies being registered, and existing companies, shall be in the public domain.
2. BO definition aligned to FIA.
3. Section 11 (2) has been amended to include that the information shall be publicly available.

Constitution made mandatory for all companies - additional information to be provided

4. Amendment of Section 37 to make it mandatory for all companies, including close companies, to adopt a Constitution.
5. A company which currently does not have a Constitution shall be required to file one within 12 months from the commencement of the section and failure to do so will result in the company being deregistered.
6. Section 41 of the Act has been amended to include the following information in addition to what was previously prescribed in the Constitution: Powers that regulate and bind the company, the names of natural persons who have control over the company and those in senior management position in terms of Section 21.

7. Section 41 of the Act has been amended to include that the Constitution of the Company also binds the Directors of the company.
8. Section 50 of the Act has been amended to remove the provisions that allowed for the issuance of shares to bearers or an unidentified shareholder.

Maintenance of share register

9. The amended Section 84 stipulates that the share register must be kept:
 - a. In Botswana
 - b. At the registered office of the company, and
 - c. At the office of the secretary of the company
10. The share register should also contain BO information.
11. Section 88 with regards the prohibition of Trusts to be entered in the share register, continues except with the exception where the Trust is a BO.
12. Section 113 requires that all security interest in movable property be registered in the Collateral Register.

Maintenance of records - period aligned to FIA

13. Section 186 (2) has been amended to provide for records of BO and dissolved companies to be kept for 20 years or as stipulated under FIA.
14. Section 329 (5) amended to provide that external companies which have ceased operations have to maintain BO information for 20 years or such period as stipulated under FIA.

- 15. Section 408 amended to provide that companies which have voluntarily wound up have to maintain BO information for 20 years or such period as stipulated under FIA.
- 16. Section 462 amended to provide that companies which have been liquidated have to maintain BO information for 20 years or such period as stipulated under FIA.

Increased penalties

- 17. Penalty clause under Section 492 has been amended to add that the Registrar may:
 - a. imposes an administrative penalty not exceeding P500,000, where:
 - i. a person fails to notify the Registrar of a change in basic information of a registered company including BO, nominee shareholder or nominator information or other notification as may be provided for in this Act,
 - ii. a person falsifies basic information of a company including BO, nominee shareholder or nominator information,
 - iii. a person fails to provide basic information of a company including BO, nominee shareholding and nominator information, or
 - iv. the director who is resident in Botswana or the company secretary fails, upon request by a competent authority, including failure to submit audited financial statements for non-exempt companies or failure to adhere to any other reporting requirements in accordance with this Act;
 - b. impose an administrative penalty not exceeding P250,000 where a director, secretary or an auditor of a company who has knowledge or who suspects another company of a suspicious conduct fails to report such suspicion to the relevant authority; or
 - c. deregister a company, where the company, its directors, shareholders, or auditor fails to pay administrative penalties within a prescribed period as directed by the Registrar, provided that:
 - i. the directors, shareholders or auditor of the company shall be prohibited from registering any other company under this Act, and
 - ii. the Registrar may, subject to section 341, restore the company to the register upon payment of the outstanding administrative fee and a restoration fee of P5,000.

Key contacts

Need further information? Get in touch!



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