

## **NEW REGULATIONS FOR LISTED COMPANIES – Siphso Ziga (Partner)**

The Botswana Stock Exchange (“BSE”) performs the function of providing facilities for the listing of securities, providing companies with an organised market place for trading in those securities and regulating the participation of companies in the market. In performing its functions, the BSE has prescribed requirements and procedures that govern all companies whose shares are listed on the BSE.

The requirements are known as Listing Requirements. These prescribe principles and/or procedures governing companies which seek a listing for the first time as well as those that are already listed. Companies whose securities are listed on the BSE are enjoined to comply with these requirements for so long as they remain listed.

The BSE has recently amended its Listing Requirements. These requirements were intended to be effective from 1 June 2016; however, the effective date has since been deferred. In a notice published on 30 May 2016, The BSE has indicated that the new Listing Requirements will come into force on the 1st of September 2016.

One of the most significant proposed amendments includes the requirement for directors and senior management of all listed companies to be favourably vetted by the Non-Bank Financial Institution Regulatory Authority (NBFIRA).

Presently, NBFIRA only regulates non-bank financial institutions. In terms of its enabling Act, is empowered to vet and approve directors and senior management of non-bank financial institutions which include an asset manager, an administrator of a pension or provident fund, a person operating a central securities depository, a collective investment undertaking that is an investment company with variable capital, a person operating a collective investment undertaking other than one described in paragraph, a custodian, a finance or leasing company, a friendly society, an insurance agent, an insurance broker, an insurer, an international insurance firm, an investment adviser, a management company for a collective investment undertaking, a member of the insurance industry, a micro lender, a pension or provident fund, a securities dealer, the operator of a securities exchange, a trustee of a collective investment undertaking or a pension or provident fund and a financial group.

This means that when the Listing Requirements come into force, all directors of listed companies which are not non-bank financial institutions will also have to be vetted and approved by NBFIRA. This effectively extends the mandate of NBFIRA beyond the scope set out in its enabling Act which is to “*regulate and supervise non-bank financial institutions.*”

In our view, there could be compelling arguments that the Listing Requirements in that regard are ultra vires the provisions of the NBFIRA Act. That is, beyond the powers bestowed on NBFIRA by the Act.

Another significant amendment relates to the new requirements that “*only advisers approved by the BSE Register FOR Registered Advisers may act as an adviser for an issuer for listing related matters or an applicant applying to list on the BSE.*” This relates to legal advisers, corporate finance advisers, reporting accountants and auditors and property valuers. In addition to other legal requirements that may be imposed on them to enable them to practice, these practitioners will have to comply with the further criteria imposed by the BSE in order to advise clients who are involved in listing transactions. This provision restricts competition and therefore it remains to be seen what the attitude of the Competition Authority will be towards this.

The new Listing Requirements have various other provisions which have been amended and have significant consequences for listed companies. Officers of listed companies are strongly urged to familiarise themselves with the listing requirements which are available from the BSE.

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