

## **THE TRIBAL LAND ACT AMENDMENT - WHAT YOU NEED TO KNOW - (One Seikano, Associate)**

The Tribal Land Bill was published in the extraordinary Government Gazette dated 3rd April 2017.

Should the Bill, as drafted, become an Act of parliament (the “new Act”), it will repeal and replace the current Tribal Land Act (the “operational Act”).

The primary objective of the “new Act” is to improve the administration of tribal land in Botswana and the “new Act” has introduced a number of significant amendments in this regard.

The aim of this article is to highlight three of the most important amendments;

Firstly, the powers of the Land Board have been widened. This was done to enhance the capacity of the Land Boards' to operate more efficiently as corporate bodies. The Land Board now has the power to grant consent for non-citizens to acquire tribal land, this power was previously vested in the Minister under the “operational Act”.

Secondly, there is now a requirement that all customary land rights be registered by the Registrar of Deeds and a prohibition on the occupation of newly allocated land unless it has been so registered. The “new Act” also requires that all persons who are already in occupation of land granted to them under the “operational Act” must apply, within six months of the commencement of the “new Act” to have their land registered. Furthermore, the “new Act” requires such registration to be done or effected through the agency of the Land Board and by submitting an application in an approved format to the Land Board.

Thirdly, the ‘new Act’ regulates future transactions or dealings in tribal land more closely. More particularly the consent of the Land Board will now be required for all transactions involving cession, mortgages, leases of five years or more, and exchanges of any tribal land. The “new Act” also expressly regulates transactions of tribal land involving non-citizens and, in this regard, requires such transactions to first be advertised in the Gazette and at least one national newspaper and thereafter the consent of the Land Board to be obtained.

The Land Board in giving or rejecting consent to a transaction involving a non-citizen is required to have regard to:

- Any objections raised by a citizen regarding the transaction;
- How the person taking cession of the land is likely to utilise the land;
- In the case of a division of the land, whether the division would be likely to reduce the productivity of the land; and
- public interest.

The “new Act” also requires that all shares in a company be held by citizens if that company is to qualify as a citizen. This means that a non-citizen can no longer acquire shareholding of any size in a company holding tribal land without first complying with the consent requirements of the “new Act”. Previously this was possible provided that the non-citizen held less than 51% of the shareholding in that company. This is something to watch out for going forward.