

THE NEW COMPANIES AMENDMENT BILL 2018, TO INTRODUCE AN ONLINE SYSTEM & SERVICES BY THE COMPANIES AND INTELLECTUAL PROPERTY AUTHORITY – Boikaego Mogae (Pupil Attorney)

The Companies Amendment Bill (the “**Amendment Bill**”), which is yet to come into force, seeks amongst other things, to introduce the provision of online services by the Companies and Intellectual Property Authority (“**CIPA**”) to the public, in a bid to be more efficient and increase the ease of doing business in Botswana.

The Amendment Bill removes all reference to the manual inspection of company files (“the **companies register**”), and makes the companies register available online and accessible to the public at no cost. With the availability of online-services, companies will be able to submit their annual returns online as opposed to queuing at CIPA for hours.

An added benefit of the availability of an online system and services, is that in future the Registrar of Companies (“the **Registrar**”) will be allowed to use various forms of media such as the internet for the wide dissemination of public notices and the publishing of same.

The Amendment Bill will further introduce changes to many sections dealing with the process of company registration, to simplify the process and enable one to register a company online. For instance, companies will only be required to state how many shares are owned by each shareholder and need not state the class or the value of such shares.

A noteworthy feature of the Amendment Bill, is the introduction of the concept of the “**beneficial owner**” of shares. The “**beneficial owner**” is defined as a 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. The Amendment Bill requires that companies disclose who its beneficial owners are to ensure that the company is not being used as a vehicle for money laundering, terrorist financing or other illegal activities. In addition, the Bill requires external companies to lodge notice in the prescribed form with the Registrar, of any change or alteration in the shareholding, shares or beneficial ownership thereof.

In furtherance of the implementation of online services, another two Bills were prepared to supplement the Amendment Bill, the first of which is the **Companies Re-Registration Bill**. The Companies Re-Registration Bill requires all existing companies to re-register with the Registrar, for purposes of enabling the input of accurate and reliable data into the online system. The second Bill, being the **Registration of Business Names Re-Registration Bill**, requires that all existing firms, body corporates or individuals carrying on and having a place of business in Botswana, under a registered business name, re-register said business name. Both these Bills, provide for a transition period within which the respective re-registration applications must be submitted to the Registrar, failing which the company or the business name, whichever the case may be, will be de-registered.

Another notable introduction under the Bill is that it removes all reference to dormant companies, and going forward companies will thus either have an active or de-registered status. The Companies Act

("the **Act**") identifies a company as being "**dormant**", when there is a period in which there are no significant accounting transactions which occur. On the occurrence of any accounting transaction, a company ceases to be dormant. One of the popular advantages of having a dormant company status is that the obligation to submit annual returns is suspended, until the company resumes operating. The coming into force of the Amendment Bill will result in the loss of this advantage and the dormant status of companies.

The arrival of an online system at CIPA, will enable the Registrar to be better placed to enforce compliance with the provisions of the Act and impose sanctions for non-compliance with the requirements thereof. For instance, the Amendment Bill provides that where a company fails to submit annual returns by the relevant deadline, the Registrar may remove the non-compliant company from the companies register without notice thereof to same. Further, the failure to deliver an annual return to the Registrar will constitute an offence for both company directors and the company secretary thereof, which attracts a maximum fine of P 20,000.00 (Twenty Thousand Pula).

The business community and individuals who own or have holdings in a company in Botswana, would be well advised to prepare themselves for the passing of this Amendment Bill, and acquaint themselves with its provisions, as these provisions will affect the status and compliance obligations of their company.