

# The new Companies Act -2003

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Are you and your business compliant with the new act?

We have laid out a brief synopsis of the much awaited Companies Act -2003 coming into effect from 3<sup>rd</sup> July 2007.

The Act requires that all companies have to be classified under either one of these categories namely exempt private company, non exempt private company, public company or close company.

## Private company

- maximum 25 shareholders (previously 50)
- minimum 1 shareholder
- minimum 1 director.

## Exempt private company

- total assets are less than P 2,000,000 in the preceding financial year **And** annual turnover is less than P 5,000,000 in the preceding financial year
- no audit is required, however can opt for audit
- financial statements to be prepared within 7 months after year end.
- no filing of financials with Registrar of Companies
- statement of charges pertaining to mortgages and bonds to be maintained and submitted to Registrar of Companies

Any private company that does not belong to the defined category of exempt private company is a non-exempt private company

## Non-exempt private company

- financial statements to be prepared within 7 months after the year end
- books have to be audited
- audited financial statements have to be filed with Registrar of Companies
- can only appoint a qualified company secretary as defined in the Act.

## Public company

- no restriction on number of shareholders
- minimum 2 directors
- can only appoint a qualified company secretary as defined in the Act
- financial statements to be prepared within 5 months after the year end
- audited financial statements have to be filed with Registrar of Companies

## Close company

Any one or more persons, up to 5 can form a close company.

Any existing company can convert itself to a close company subject to following qualifications:

- exempt private company with 1 to 5 members can opt for conversion
- adhere to conversion procedures
- no directors, however shareholders will be officers of the company.
- no share capital
- company cannot be a member
- it must have an accounting officer
- financial statements to be prepared within 7 months after the year end

With the introduction of the new Companies Act, Registrar of Companies intends to speed up the process of company formation.

#### **Other salient features:**

- The new Companies Act stipulates comprehensive provisions for duties of auditors, directors and company secretaries.
- Abolishes the concepts of par value of shares and authorised capital
- Provides for companies to purchase their own shares and also finance the acquisition of their own shares subject to a solvency test.
- A company may be classified as a dormant company if it does not have significant accounting transaction during a period.

#### **Solvency test**

A company satisfies a solvency test if:

- The company is able to pay its debts as they become due in the normal course of business
- The value of the companies assets is greater than the value of its liabilities and the value of its stated capital

The Companies Act requires application of solvency test under numerous circumstances. To mention a few:

- Before declaration of dividend /distribution
- Before issuing new shares
- Before reduction of stated capital
- Before redemption of shares
- Before providing financial assistance to acquire its own shares

#### **Compulsory compliance is essential on the following aspects:**

- Accounting records to be maintained in Botswana
- All shares issued in existing companies shall be deemed as shares of no par value
- Qualified company secretary to be appointed for non exempt private companies and public companies
- Auditor to be appointed for non exempt private companies and public companies
- Particulars of Charges to be filed with the Registrar of Companies
- Specified details to be printed on a company letterhead
- Classification as exempt and non exempt private company
- Filing of financial statements with the Registrar of Companies
- Procedures to follow during company closure
- Filing of Annual Return for company limited by guarantee
- Notice of failure to appoint Auditors

**Watch out for more updates on the Companies Act...**

Contact us to assist you with a smooth transition...

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