

COMPANIES (AMENDMENT) ACT, 2011

No. 6



of 2011

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 21 of Cap. 42:01
3. Amendment of section 106 of the Act
4. Amendment of section 297 of the Act

An Act to amend the Companies Act.*Date of Assent:* 03.05.11*Date of Commencement:* 13.05.2011

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Companies (Amendment) Act, 2011.
2. The Companies Act, in this Act referred to as "the Act", is amended in section 21 —
 - (a) by substituting, for subsection (4), the following new subsection —

"(4) The person who may make the declaration of compliance referred to in subsection (3) and section 50 (4) (c) shall be —

 - (a) a legal practitioner;
 - (b) a member of the Botswana Institute of Accounts;
 - (c) a member of the Southern African Institute of Chartered Secretaries and Administrators; or
 - (d) such other class of persons as the Minister may prescribe."; and
 - (b) by adding immediately after subsection (4), the following new subsection —

"(5) The person who may make the declaration of compliance referred to in subsection (3) shall be —

 - (a) a director of the proposed company;
 - (b) a member of —
 - (i) a company limited by shares,
 - (ii) a close company, or
 - (iii) a company limited by guarantee; or
 - (c) such other class of person as the Minister may prescribe."

Short title
Amendment
of section 21
of Cap. 42:01

Amendment
of section 106
of the Act

3. Section 106 of the Act is amended in subsection (2) by substituting, for the figure "10" which appears therein, the figure "60".

Amendment
of section 297
of the Act

4. Section 297 of the Act is amended by substituting, for the word "shares" which appears therein, the words "share or debentures".

PASSED by the National Assembly this 6th day of April, 2011.

B.N. DITHAPO,
Clerk of the National Assembly.

Bill No. 42 of 2008

COMPANIES (AMENDMENT) BILL, 2008
(Published on 8th December, 2008)

MEMORANDUM

A draft of the above Bill, which it is intended to present to the National Assembly, is set out below.

The objects of the Bill are to amend the Companies Act by giving the Registrar of Companies the powers to delegate the powers to sign and issue certificates of company incorporation to senior officers at the level of Principal Commercial Officer and above, to remove the exemption of close companies from filing annual returns, and to provide for a “once-off” amnesty to companies with outstanding annual returns on or before 3rd July, 2007.

G. D. LEFHOKO,
Acting Minister of Trade and Industry.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Insertion of section 22A in Cap. 42:01
3. Amendment of section 191 of the Act
4. Amendment of section 217 of the Act
5. Amendment of section 249 of the Act
6. Amendment of section 489 of the Act
7. Amendment of section 527 of the Act
8. Amendment of Ninth Schedule of the Act

A Bill

— entitled —

An Act to amend the Companies Act

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| <p>1. This Act may be cited as the Companies (Amendment) Act, 2008.</p> | <p>Short title</p> |
| <p>2. The Companies Act (hereinafter referred to as “the Act”) is amended by inserting immediately after section 22, the following new section —</p> <p>“Delegation of powers by the Registrar</p> | <p>Insertion of section 22A in Cap. 42:01</p> |
- 22A The Registrar may, in writing, delegate to any officer at or above the level of Principal Commercial Officer in the office of the Registrar of Companies, the power to sign and issue certificates of incorporation”.

- Amendment of section 191 of the Act
3. The Act is amended in section 191 by substituting for subsection (5), the following new subsection —
“(5) If a company fails to comply with subsection (4), the company and every director of the company shall be guilty of an offence and liable to the penalties set out in section 493 (2)”.
- Amendment of section 217 of the Act
4. The Act is amended in section 217 by inserting immediately after subsection (6), the following new subsection —
“(6A) The annual return of a close company shall be in the form to be prescribed under this Act.”
- Amendment of section 249 of the Act
5. Section 249 of the Act is amended in subsection (4), by substituting for the words “Tenth Schedule” appearing therein, the words “Ninth Schedule”.
- Amendment of section 489 of the Act
6. Section 489 of the Act is amended in subsection (2), by substituting for the words “section 191” appearing therein, the words “section 189”.
- Amendment of section 527 of the Act
7. The Act is amended in section 527 by inserting immediately after subsection (8), the following new subsection —
“(8A) Subject to the other provisions of this Act, a company which has outstanding annual returns on or before 3rd July, 2007, shall file all such outstanding annual returns within 12 months commencing on 1st December, 2008, upon the payment of a filing fee of P300,00 for every outstanding annual return.”
- Amendment of Ninth Schedule of the Act
8. The Act is amended by substituting for the Ninth Schedule, the following new Schedule —

“NINTH SCHEDULE
(section 249 (4))

PROVISIONS OF THE ACT WHICH DO NOT APPLY TO
CLOSE COMPANIES

- (a) Parts VI, VII and VIII - shares, title to shares, transfers and share register, and shareholders rights and obligations.
- (b) Part X – directors and secretaries other than section 160 which shall apply to close companies with the reference to a director being read as a reference to a member.
- (c) Part XIII – accounting records and disclosure except that sections 191 to 211 shall apply to every close company which is a non-exempt close company as provided by section 272 (4), and sections 190 and 218 to 221 which shall apply to all close companies.
- (d) Sections 212 to 216 – annual reports
- (e) Part XIV – amalgamations
- (f) Part XVII – companies limited by guarantee
- (g) Part XVIII – private companies
- (h) Part XXIV – external companies
- (i) Part XXV – transfer of registration and registration of statutory corporations as companies
- (j) Sections 366 to 368, 391, 393, 394, 395 to 397 – liabilities of contributories but sections 398, 401, 425, 428, 458, 459, 463 and 465 shall apply as if a member of a close company were a contributory.
- (k) Part XXVII – winding up of unregistered associations”.