

THE COMPANIES (AMENDMENT) ACT, 1970

No. 63



of 1970.

ARRANGEMENT OF SECTIONS

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**AN ACT TO AMEND THE COMPANIES PROCLAMATION, 1959 AND TO MAKE
A CONSEQUENTIAL AMENDMENT TO THE DEEDS REGISTRY PROCLAMATION,
1960.**

Date of Assent: 25.11.70.

Date of Commencement: 14.12.1970

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Companies (Amendment) Act, 1970.

Repeal and replacement of section 79 of Proclamation 71 of 1959

2. Section 79 of the Companies Proclamation, 1959, (71 of 1959) hereinafter called "the principal Act" is repealed and replaced by the following new section—

"Certificate to be evidence of title

79. A certificate, under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to the shares'.

Amendment of section 174 of the principal Act

3. Section 174 of the principal Act is amended —

- (a) by the deletion of the fullstop at the end of paragraph (iii) of the proviso to subsection (1) and the substitution therefor of the words; and";
- (b) by the addition, immediately after paragraph (iii) of the proviso to subsection (1), of the following new paragraph —

"(iv) a creditor shall not be entitled to present a petition for winding up a company unless such petition when presented is accompanied by the sum of R100 (hereinafter called "the petition fee")."; and

- (c) by the addition, immediately after subsection (2), of the following new subsection —

"(3) Notwithstanding any other provisions of this Act, the petition fee paid in accordance with paragraph (iv) of the proviso to subsection (1) shall be dealt with as follows —

- (i) if the petition is refused, the petition fee shall be refunded by the Master to the petitioner after deduction of any costs which may be awarded under section 175 (1);
- (ii) if the petition is granted and the assets of the company are insufficient to pay the costs of the winding up, the petition fee, or such portion thereof as shall be necessary, shall be used to pay the costs of the winding up and the balance, if any, shall be refunded by the Master to the petitioner; or
- (iii) if the petition is granted and there are sufficient assets to pay the costs of the winding up, the petition fee shall be refunded by the Master to the petitioner:

Provided that, if a petition is granted and the Master, having made due enquiry, has reasonable cause to believe that there are sufficient funds to pay the costs of the winding up, he may, on

due application having been made to him, refund to the petitioner the petition fee notwithstanding the fact that the winding up has not been completed.”.

Amendment of section 206 of the principal Act

4. Section 206 of the principal Act is amended by the insertion of the words “or officer” immediately after the word “contributory” wheresoever (including the margin note) that word appears.

Amendment of section 239 of the principal Act

5. Section 239 of the principal Act is amended in subsection (1) —

- (a) by the deletion of the fullstop at the end thereof and the substitution therefor the word “; or”; and
- (b) by the insertion immediately thereafter of the following new paragraph and proviso —

“(j) any person who resides outside Botswana:

Provided that, notwithstanding paragraph (j), any person resident outside Botswana may be elected or appointed as liquidator who —

- (i) is an attorney entitled under the Legal Practitioners Act, 1967 (34 of 1967), to practise as such in the courts of Botswana;
- (ii) is a qualified accountant having a place of business in Botswana;
or
- (iii) is a person whom the Master has, in writing, certified to be a fit and proper person to be so appointed,

if such person —

- (A) is not disqualified for election or appointment on any other ground;
and
- (B) immediately after his election or appointment chooses for the purpose of the winding up of the company a *domicilium citandi et executandi* within Botswana, and notifies such in the next available issue of the *Gazette*.”.

Further amendment of section 239 of the principal Act

6. Section 239 of the principal Act is amended by the addition immediately after subsection (3) of the following new subsection —

“(4) For the purposes of this section “qualified accountant” means an accountant holding such qualifications as the Minister may, by Notice in the *Gazette*, prescribe.”.

Amendment of section 286 of the principal Act

7. Subsection (8) of section 286 of the principal Act is repealed.

Insertion of new section 288A into the principal Act

8. The principal Act is amended by the insertion, immediately after section 288, of the following new section —

“Power of external company to own land in Botswana

288A. (1) Save as may be expressly provided in any other written law, an external company to which subsection (1) of section 286 applies and which has lodged with the Registrar the documents and particulars therein mentioned shall have the same power to own immovable property in Botswana as if it were a company incorporated in Botswana.

(2) From a date three months after the coming into force of this section, an external company to which the said subsection does not apply or which has not lodged in terms of the said section the documents and particulars therein mentioned shall not be capable of acquiring the ownership of immovable property in Botswana.”.

Amendment of Proclamation 36 of 1960

9. The Deeds Registry Proclamation, 1960 (36 of 1960) is amended by the insertion, immediately after section 85, of the following new section —

“Production of documents before transfer of land to a company

85A. No deed of grant or transfer of land to a company shall be registered unless accompanied by —

- (a) in the case of a company incorporated in Botswana, the original or a certified copy of the Certificate of Incorporation issued to it under section 20 of the Companies Proclamation, 1959, (71 of 1959); or
- (b) in the case of an external company, a certificate, dated within three months prior to the date of lodgement of the deed of grant or transfer, under the hand of the Registrar of Companies, that subsection (i) of section 286 of the Companies Proclamation, 1959, has been complied with.”.

Passed by the National Assembly this day, 3rd November, 1970.

G. T. MATENGE,
Clerk of the National Assembly