MECHANISMS TO IDENTIFY AND DESCRIBE THE DIFFERENT TYPES, FORMS AND BASIC FEATURES OF LEGAL PERSONS

Legal Framework

The Companies Act establishes the legal framework governing the incorporation, classification, and regulation of legal persons in Botswana. It provides clear mechanisms for identifying the different types of legal persons that may be established and prescribes their essential legal and governance characteristics. These provisions enable competent authorities, financial institutions, designated non-financial businesses and professions (DNFBPs), and the public to distinguish between the various forms of legal persons.

Types of Legal Persons

Section 19 of the Companies Act identifies the legal persons that may be incorporated under the Act. A company may be established as:

- a company limited by shares;
- a close company; or
- a company limited by guarantee.

The Act further provides that every company limited by shares or by guarantee shall be either a public company or a private company. Unless otherwise stated in the application for incorporation or the company's constitution, a company is deemed to be a public company.

These statutory provisions clearly identify the different legal forms that may exist under the Companies Act.

Basic Features of Companies

Section 19 also prescribes the essential characteristics that every company must possess. Every company is required to have:

- a registered name;
- one or more shares, where the company is limited by shares;
- one or more members, where the company is a close company or a company limited by guarantee;
- one or more directors in the case of a private company, and at least two directors in the case of a public company;
- a secretary for all companies other than close companies; and
- an accounting officer for every close company.

These statutory requirements establish the minimum governance and ownership structure applicable to each type of legal person.

Identification through Company Names

Sections 30 and 31 prescribe naming conventions that enable the legal form of a company to be readily identified.

Companies limited by shares or by guarantee are generally required to end their registered names with the word "**Limited.**" Private companies must include the word "**Proprietary**" before "**Limited,**" while close companies must include the designation "**CC.**"

The Act also permits certain non-profit companies established for the promotion of commerce, art, science, religion, charity, or other useful purposes to omit the word "**Limited**" where the Minister grants approval. These entities remain subject to the obligations applicable to limited companies, except for the statutory exemptions expressly provided.

These naming requirements provide an immediate indication of the legal form of the entity.

Restrictions on Company Names

Section 33 prohibits the registration of company names that may falsely suggest government ownership, statutory authority, or affiliation with international organizations unless prior written consent has been obtained from the Minister.

For example, company names may not include terms such as "Government," "National," "State," "Authority," or "United Nations" without approval.

These restrictions enhance transparency by preventing misleading representations regarding the legal status or affiliation of legal persons.

Constitutional Requirements

The Companies (Amendment) Acts of 2022 and 2025 require every company, including close companies, to have and submit a constitution to the Registrar.

Companies that were incorporated before these amendments are required to submit constitutions within the prescribed statutory period. Failure to comply may result in deregistration by the Registrar.

The constitution sets out the company's governance arrangements, internal rules, and operating framework, thereby providing an important source of information regarding the legal person's structure and functioning.

Characteristics of Companies Limited by Guarantee

Section 244 establishes the distinguishing features of companies limited by guarantee.

Unlike companies limited by shares, these entities do not have share capital and are exempt from statutory provisions relating to:

- shares;
- shareholder registers;
- minority buy-out rights;
- disclosure of directors' interests in shares; and
- amalgamations.

For all other purposes, they are treated similarly to companies limited by shares, with references to shareholders interpreted as references to members.

These provisions clearly distinguish companies limited by guarantee from share-based companies.

Characteristics of Close Companies

Section 248 establishes the legal framework governing close companies.

A close company may be formed by one to five qualifying members or through the conversion of an eligible private company.

Applications for registration must include:

- the percentage interest held by each member;
- the appointment of an accounting officer who has consented in writing to act;
- the designation "**CC**" as part of the company's registered name; and
- the information required for incorporation under the Companies Act.

Once satisfied that the statutory requirements have been met, the Registrar enters the entity in the register of close companies.

These provisions define the ownership structure and governance characteristics unique to close companies.

Conclusion

The Companies Act provides comprehensive legislative mechanisms for identifying and describing the different types, forms, and essential characteristics of legal persons in Botswana. It clearly distinguishes between companies limited by shares, companies limited by guarantee, and close companies, while prescribing their governance requirements, naming conventions, constitutional obligations, and other defining features.