

# NAVIGATING BOTSWANA'S LICENSING LANDSCAPE

Foreign investors in Botswana have opportunities to operate across various sectors, including mining, tourism, ICT, manufacturing, and more, but achieving success requires due diligence and working with professionals to ensure compliance with licensing and regulatory requirements.

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## **Opportunities and Compliance**

Botswana presents a dynamic and evolving business environment, particularly when it comes to licensing laws. The 2003 Trade Act outlines specific regulations that govern business operations, ensuring economic participation by citizens while allowing room for foreign investment under structured conditions. Understanding these regulations is essential for any company looking to establish or expand its presence in Botswana.

### **The Regulatory Framework**

The 2003 Trade Act reserves licenses for citizens in 35 sectors, including but not limited to:

- Retail businesses such as supermarkets (excluding chain stores), butcheries, liquor stores, and boutiques.
- Service-based operations like car washes, funeral homes, hairdressers, and laundromats.
- Certain types of manufacturing, including furniture production, welding, and bricklaying.
- Specific construction activities related to road and railway maintenance.

Despite these restrictions, foreign investors are not entirely excluded. They can participate as minority joint venture partners in medium-sized businesses. In some cases, with written approval from the Minister of Trade, foreigners may even hold a majority share. However, obtaining such approvals requires a thorough understanding of Botswana's regulatory landscape and strategic negotiation.

### **Key Considerations for Foreign Investors**

The Ministry of Trade and Industry administers the citizen participation initiative and applies an expansive interpretation of the term "chain stores." This classification extends to any business with more than one outlet, requiring exemptions for some supermarkets and specialty stores. While these exemptions have been granted in the past, companies must now negotiate localization agreements as part of the approval process.

For businesses considering entry into Botswana's market, key regulatory bodies include:

- Botswana Investment and Trade Centre: Facilitating trade and investment opportunities.
- Botswana Bureau of Standards: Ensuring compliance with quality and safety standards.
- Botswana Unified Revenue Service: Managing tax and duty regulations.

These institutions work together to ensure that foreign investments align with national policies while maintaining fair competition and economic stability.

### **Should Foreign Companies Establish a Presence in Botswana?**

A key question for many foreign companies is whether they need to establish a physical presence in Botswana. According to Section 344 of the Companies Act Cap 42:01, a foreign company conducting business or having a place of business in Botswana must register with the Registrar of Companies. Foreign companies are required to either register as an external company (branch) or set up a local incorporated company within one month of commencing business activities in Botswana.

While the Companies Act does not define what "conducting business" means, it outlines factors that can help determine whether a foreign company is subject to registration. These factors include:

- Employing Botswana resident agents to manage or deal with property.
- Managing part of the business from Botswana.
- Having a place of business, staff, or infrastructure in Botswana.
- The level of permanence of the business in Botswana.
- Whether the contract or transaction will be performed in Botswana.

The presence of one or more of these factors may indicate that a foreign company is indeed conducting business in Botswana, although the full assessment depends on the specific circumstances of each case.

Once it is determined that a foreign company is required to register, it can choose between establishing a branch or a local subsidiary. A branch is an extension of the foreign company and does not have a separate legal identity. However, a subsidiary company offers more benefits, including tax efficiency, as it is subject to a lower corporate tax rate (22% compared to 30% for branches). Subsidiaries also isolate liability from the foreign parent company.

### **A Strategic Partner in Licensing and Compliance**

Understanding the complexities of Botswana's licensing laws and registration requirements can be challenging, particularly for foreign companies unfamiliar with the regulatory environment. This is where Pabalinga & Associates comes in. Our firm specializes in guiding businesses through the licensing process, ensuring full compliance with Botswana's trade laws while helping clients navigate localization agreements, joint venture structuring, and regulatory exemptions.

With our extensive experience and in-depth knowledge of the legal framework, we assist businesses in securing the necessary approvals efficiently and strategically. Whether you're looking to set up operations in retail, manufacturing, or service-based industries, Pabalinga & Associates is your trusted partner in achieving a seamless entry into Botswana's market.

For expert legal assistance tailored to your business needs, contact Pabalinga & Associates today.





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