WHAT IS A WIDELY HELD COMPANY IN TERMS OF THE COMPANIES ACT, 61 OF 1973 (AS AMENDED BY THE CORPORATE LAWS AMENDMENT ACT, 24 OF 2006)?

Category: Commercial Law
written by Malesela Phukubje | July 1, 2008

Section 1(h) of the Corporate Laws Amendment Act, 24 of 2006 (the "Act") inserts a new subsection 6 into the Companies Act, 61 of 1973 (the "Companies Act") and provides that a company is a widely held company if:
its articles provide for an unrestricted transfer of its shares;
it is permitted by its articles to offer shares to the public;
it decides by special resolution to be a widely held company; or
it is a subsidiary of a company described in paragraphs 1.1 to 1.3 above.
If its articles provide for an unrestricted transfer of shares: Standard articles of a private company generally restrict the transfer of shares to members of the general public. Most private companies will therefore not satisfy this requirement and accordingly not be regarded as widely held, unless there are provisions to the contrary in their shareholders' agreements.
If it is permitted by its articles to offer shares to the public: The articles of association of a public company usually permit it to offers shares to members of the general public. Most public companies will be regarded as widely held in terms of the Act provided there are no other provisions to the contrary applicable to them.
If it decides by special resolution to be a widely held company: Any company, whether private or public, may now pass a resolution at its AGM pronouncing its intention to become a widely held company.
If it is a subsidiary of a company described in paragraphs 13.1 to 13.3 above: Any company which is a subsidiary of a widely held company as defined in the Companies Act will itself be deemed to be a widely held company.
The importance of knowing whether a company is widely held or not lies in the requirements for compliance which are stipulated in the Act. Failure to comply with stipulated requirements may result in criminal offences and heavy penalties for responsible directors.
Some companies may unwittingly be classified as widely held or limited interest companies, an act which may require them to comply with certain, clearly defined obligations. It is therefore important to know which classification a company falls under in order to know what obligations attach to it.
The New Companies Bill published in the Government Gazette No 31104 of 30 May 2008 proposed another new classification of companies as well as obligations which attach to them and their officers. It is advisable to monitor developments in this regard because the category of company discussed above may very well be rendered obsolete with the promulgation of the Bill, if it remains unchanged.