



Litigation Department Brochure

Firm overview

Minchin & Kelly (Botswana) was established in 1890 to serve the commercial and legal needs of Botswana and has successfully served this purpose for over a century.

The firm continues to provide high quality legal services to domestic clients in Botswana but has also developed into a leading provider of services to international clients wanting to invest or do business in the country.

About us

The firm's historical association with and presence in Botswana together with a highly skilled and internationally experienced team of lawyers allows us to provide clients with commercial, legal and business solutions to complex legal issues in a manner that is sympathetic to and workable in Botswana.

The firm's primary areas of practice include corporate and commercial, banking and finance, projects, commercial litigation, insolvency, labour law and property. Clients include financial institutions, national utility companies, global corporations, FTSE 100 and Fortune 500 companies, the Botswana government, individuals and various other medium to large companies.

As of March 2012, the firm formally became a member of DLA Piper Africa, a network of independent law firms working across Africa. DLA Piper is the largest law firm in the world with a total of 4,200 lawyers practising in more than 40 countries worldwide. Our membership of this network has given our firm access to specialised legal skills in practically every field of employment law.



Overview

We offer a one stop solution through our Civil & Corporate Litigation Division. Our specialist litigators have vast knowledge and experience in dealing with and resolving disputes through arbitration, litigation and mediation. They are passionate, dedicated and determined to get the best results possible for our clients.

We advise and represent national and multi-national corporations, financial institutions and government entities in complex, multi-jurisdictional disputes. We ensure that our clients receive relevant, timely and effective advice based on our extensive expertise in litigation, arbitration, conciliation, mediation, negotiation and other means of pre-empting and settling disputes.

We are supported by DLA Piper's Litigation and Arbitration group. This association means we are able to manage clients dispute matters anywhere in the world. In cross-border disputes, clients will work through a single point of contact with their trusted Minchin & Kelly contact in Botswana. The relationship also gives our clients access to a wealth of experience and knowledge from around the globe, and immediate access to a worldwide database of important dispute resolution cases. The added value is that this facility saves our clients time and money.

Recent experience

Represented the Botswana Public Officer Pension Fund (BPOPF) in a dispute involving Capital Management Botswana (Pty) Ltd (CMB). Botswana Opportunity Partnership ("BOP") was a fund that had been established by BPOPF and CMB in terms of an en commandite partnership agreement. CMB attempted to misappropriate the monies BPOPF invested into BOP. This resulted in aggressive and extensive litigation between BPOPF and CMB. BPOPF was ultimately successful in the litigation and CMB was placed into statutory management by the Regulator and ultimately into liquidation. BOP is the largest creditor in the liquidation. One of the purposes of the liquidation is to establish the fate of approximately BWP500 million of pensioners funds that BPOPF invested into BOP. Various civil proceedings have also been instituted both in Botswana and in South Africa in an attempt to recover the misappropriate funds.

BCL Limited (BCL) was the largest mining company in Botswana. It went into liquidation in 2016. The liquidation was the biggest liquidation in the history of Botswana. Epiroc (Pty) Ltd (Epiroc) is a creditor of BCL and has instituted action against the Attorney General and the former directors of BCL

for the recovery of approximately BWP60 million that Epiroc claims is payable to it by BCL. Epiroc has made its claim in terms of Section 481 of the Botswana Companies Act. We act on behalf of the former directors in the matter.

Kgalagadi Breweries (Pty) Ltd (KBL) is the largest producer and supplier of beer in Botswana. Following the outbreak of the Covid-19 pandemic, Botswana was placed into a state of emergency and various Government Regulations were promulgated by the President of Botswana pursuant to the extraordinary powers conferred upon him by the Emergency Powers Act. In terms of these Regulations, KBL was prohibited from selling alcohol for various periods of time during 2020 and 2021 on the basis that the sale and consumption of alcohol contributed towards the spread of Covid-19. KBL launched urgent court proceedings in which it challenged the lawfulness of the Regulations and the exercise of the President's powers. The matter progressed all the way to the Court of Appeal.

The matter was worth hundreds of millions of Pula.

We acted on behalf of KBL in the matter.



EBC Guernsey Ltd (EBC) is an international financial institution that invested in Kingdom Bank Africa Limited (KBAL), a bank based in Botswana. KBAL was insolvent and was ultimately placed into liquidation. EBC was consequently unable to recover the invested funds and instituted legal proceedings against the Regulator, the Bank of Botswana (BoB), for recovery of the funds. The claim was founded on breach of duty. We acted on behalf of EBC in the matter.

John Little (Little) was the appointed liquidator of Kingdom Bank Africa Limited (KBAL). He instituted an action against KBAL's former auditors on behalf of the creditors of KBAL for recovery of the debts of KBAL. The claim was based on the auditors alleged audit negligence. We acted on behalf of Little in the matter.

Pricewaterhousecoopers Botswana (PwC) were the auditors of Choppies Enterprises Limited ("Choppies") and various of its subsidiaries. Two of the shareholders of Choppies instituted action against PwC in which they sought payment of the sum of approximately BWP850 million from PwC for the loss they alleged to have suffered as a result of PwC's actions. We act on behalf of PwC in the matter.

Pula Steel and Casting Manufacturers (Pty) Ltd (Pula Steel) was a manufacturer of steel billets from scrap steel. It became insolvent and was first placed into judicial management and subsequently, into liquidation. We act as advisor to liquidator on all legal issues arising from his administration of the insolvent estate and we represented him in various legal proceedings that ensured following the liquidation.

After the 2019 national and local government elections, there was a flood of election petitions in which unsuccessful candidates challenged the election results. We acted and successfully defended the Independent Electoral Commission both at the High Court and Court of Appeal in that marathon litigation of national importance.

We represented the Public Procurement and Asset Disposal Board in various tender disputes. We have also advised both local and international companies on the provisions of the new Public Procurement Act.



Key contacts



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Further information on DLA Piper Africa and DLA Piper can be found at www.dlapiper africa.com.

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