REGISTERING TRUSTS: A GROWING TREND IN BOTSWANA – Tatenda Dumba (Senior Associate)

There has recently been an increase in the number of Trusts registered in Botswana. One can ask, should I jump on the bandwagon and register a Trust?

Historically, Trusts have been registered for the purpose of administering an estate of minors who cannot legally, or practically, manage their own affairs.

A Trust may also arise from the provisions of a Will. This is known as a Testamentary Trust which automatically comes into being on the death of the Testator.

Currently Trusts are commonly being registered for asset protection planning. This is highly beneficial in the instances in which the nature of your business is risky and you want to avoid any personal liability attaching to you or your assets. Alternatively you may intend to be married out of community of property but neither spouse is comfortable with putting all the assets in the name of one. A Trust in that case can be registered and have both spouses be Trustees and Beneficiaries to the assets in the Trust.

Revocable Trusts are ideal in these instances so that the Trust assets remain accessible to you during your lifetime while designating to whom the remaining assets will pass thereafter.

Furthermore currently, there is no statutory law that governs Trusts in Botswana unlike our counterparts in South Africa which has the Trust Property Control Act 57 of 1988. This makes it much easier to register Trusts without vetting it against any law and, there is minimal to no compliance of filing any documents or statutory returns or the Trustee being called by the Master to account for Trust assets.