**Republic of Botswana**

**Companies Act (CAP 42:01)**

**(As Amended)**

**A Close Company**

**THE CONSTITUTION**

**of**

**Company Name:**

**Company Registration Number:**

**Adopted By Special Resolution Passed on dd/mm/yyyy**

1. CONSTITUTION OF A CLOSE COMPANY

*(section 37(1))*

COMPANY NAME:

***1. Interpretation***

In this constitution −

“Act” means the Companies Act;

“beneficial owner” has the meaning and understanding ascribed to it under section 2 of the Financial Intelligence Act; and

“ultimate effective control” has the meaning and understanding ascribed to it under section 2 of the Financial Intelligence Act.

 ***2. Issue of new contributions mandate***

New contributions shall be issued in accordance with section 250 with the pre-emptive rights provided for in subsections (1), (2), and (3).

***3. Transfer of contributions***

(1) *Freedom to Transfer is Qualified:* Every change in the ownership of contributions in the capital of the company shall be subject to the following limitations and restrictions.

(2) *Pre-emptive Provisions*: No contribution in the capital of the company shall be sold or transferred by any member unless and until the rights of pre-emption hereinafter conferred have been exhausted.

(3) *Transfer Notice and Fair Price*: It shall be required that ‒

­*(a)* every member including the personal representative of a deceased member or the trustee of the property of an insolvent member who desires to sell or transfer any contribution or contributions shall give notice in writing to the management of such desire;

*(b)* if such notice includes several contributions, it shall not operate as if it were a separate notice in respect of each such contribution, and the proposing transferor shall be under no obligation to sell or transfer some of the contributions specified in such notice;

*(c)* such notice shall be irrevocable and shall be deemed to appoint the management the proposing transferor's agent to sell such contribution in

one or more lots to any member or members of the company (including the managers or any of them) at a price to be agreed upon between the party giving such notice and the management or, failing agreement between them within 28 days of the management receiving such notice, at a fair price to be determined on the application of either party by a person to be nominated by the chairperson for the time being of the Law Society of Botswana; and

*(d)* such person, referred to in paragraph *(b)*, when nominated, and in certifying the sum which in that person's opinion is the fair price for the contribution, shall be considered to be acting as an expert and not as an arbitrator.

(4) Offer to Members and Consequent Sale: The following conditions shall apply −

*(a)* upon the price for such contributions being agreed on or determined, as the case may be, the management shall immediately give notice to each of the members (other than the person wanting to sell or transfer such contributions) stating the −

(i) number and price of such contributions and inviting each of the members to whom the notice is given to state in writing within 21 days after the date of the notice whether such member is willing to purchase any, and

(ii) maximum number of such contributions, where such member is willing to purchase any;

*(b)* at the expiration of 21 days from the date of the notice the management shall ‒

­(i) apportion such contributions amongst the members (if more than one) who have expressed a desire to purchase the same; and

(ii) as far as may be pro rata according to the number of contributions already held by the members respectively, or if there is only one such member, the whole of such contribution shall be sold to that member: Provided that no member shall be obliged to take more than the maximum number of contribution stated in that member’s response to such notice; and

*(c)* upon such apportionment being made or such one member notifying such member's willingness to purchase, as the case may be, the party desiring to sell or transfer such contribution or contributions shall be bound, upon payment of the said price, to transfer such contribution or contributions to the respective member or members who have or has agreed to purchase the same and, in default thereof, the management may receive and give a good discharge for the purchase money on behalf of the party desiring to sell and enter the name of the purchasers or purchaser in the member register as holder or holders of such contribution or contributions so sold.

(5) *contributions on Offer not Taken up by members:* In the event of all such contributions not being sold under the preceding clause within 60 days of the management receiving notice, the party desiring to sell or transfer shall be at liberty within a further period of 30 days to sell the contributions not so sold, but not a portion only, to persons who are not members, provided however, that such party shall not sell them for a price less than the price at which the same have been offered for sale to the members under this clause, but every such sale shall nevertheless be subject to the provisions of subclause 4.

(6) *Family Transactions*: Any contribution ‒­

*(a)* may be transferred by a member to, or to trustees for, any husband or wife or child or grandchild or son-in-law or daughter-in-law of that member, and any contribution of a deceased member may be transferred by his or her executors or administrators to any husband or grandchild or son-in-law or daughter-in-law of the deceased member; and

*(b)* held by trustees under any such trust as aforesaid may be transferred to any beneficiary, referred to in paragraph *(a)*, of such trust, and contribution standing in the name of the trustee of the will of any deceased member or trustees under any such trust may be transferred upon any change of trustees for the time being of such will or trust, and the restrictions contained in the preceding subclauses 3(2) to 3(5) inclusive shall not apply to any transfer authorised by this clause but every such transfer shall nevertheless be subject to the provisions of clause 4.

 ***4. Members meetings***

Members’ meetings shall be conducted in accordance with Part A of this Constitution.

***5. Management***

(1) The management of the company shall be such person or persons as may be appointed from time to time by ordinary resolution, or by notice to the company signed by the member or members for the time being of the majority of contribution in the capital of the company but so that the total number of managers shall not at any time exceed the number fixed pursuant to subclause (2) or by ordinary resolution pursuant to subclause (3).

(2) The company may by ordinary resolution increase or reduce the number of managers.

(3) The management may appoint any person to be a manager to fill a casual vacancy or as an addition to the existing managers, but the total number of managers shall not at any time exceed the number fixed in accordance with subclause (1) or by ordinary resolution pursuant to subclause (2).

(4) Any manager appointed under subclause (3) shall hold office only until the next following annual meeting and shall then retire but is eligible for election at that meeting.

(5) A manager shall hold office until removed by special resolution pursuant

***6. Remuneration of managers***

The remuneration of managers shall be determined in accordance with section 265.

***7. Members Distributions***

(1) All members are entitled to share in the capital profits of the company in proportion to their respective interests in the company.

(2) All distributions shall be authorised by management with the approval of an ordinary resolution of members, provided that the solvency test is satisfied.

(3) The managers may deduct from any interest payable to any member, all sums of money, if any, presently payable by him to the company in relation to the contributions of the company.

***8. Winding up***

(1) Subject to the terms of issue of any contributions in the company and to subclause 2, upon the winding up of the company, the assets, if any, remaining after payment of the debts and liabilities of the company and the costs of winding up ("the surplus assets"), shall be distributed among the members in proportion to their contributions provided, however, that the holders of contributions not fully paid up shall only receive a proportionate interest of their entitlement being an amount paid to the company in satisfaction of the liability of the member to the company in respect of the contribution either under the constitution of the company or pursuant to the terms of issue of the contribution.

(2) Where the company is wound up, the liquidator may, with the sanction of a special resolution of the company, divide in kind amongst the members the assets of the company, whether they consist of property of the same kind or not, and may for the purpose set such value as he deems fair upon any property to be divided and may determine how the division is to be carried out as between the members.

***9. One person companies and companies in which all members are managers***

If at any time the company, for a continuous period exceeding six months is a one-person company, or is a company in which all members also hold office as managers, then, for so long as such circumstance continues, the following provisions shall apply ‒­

*(a)* new contributions may be issued by unanimous resolution signed by the member or members having such rights and, on such terms, and conditions as may be set out in the resolution;

*(b)* a copy of the resolution shall be registered with the Registrar of Companies; and

*(c)* separate meetings of members and managers need not be held provided all matters required by the Act to be dealt with by a general meeting of members or a meeting of managers are dealt with by way of a unanimous resolution.

**PART A**

PROCEEDINGS AT MEETINGS OF MEMBERS

***10. Chairperson***

(1) If the members have elected a chairperson of the management, and the chairperson of the management is present at a meeting of members, he or she shall chair the meeting.

(2) If no chairperson of the management has been elected or if, at any meeting of members, the chairperson of the board is not present within 15 minutes of the time appointed for the commencement of the meeting, the managers present shall elect one of their number to be chairperson of the meeting. If no director is willing to act as chairperson, or if no manager is present within 15 minutes of the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.

***11. Notice of meetings***

(1) Written notice of the time and place of a meeting of members shall be sent to every member entitled to receive notice of the meeting and to every manager, any secretary and any auditor of the company not less than 10 working days before the meeting.

(2) The notice shall state –

*(a)* the nature of the business to be transacted at the meeting in sufficient detail to enable a member to form a reasoned judgment in relation to it; and

 *(b)* the text of any special resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such members agree to the waiver.

(4) The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a member does not invalidate the proceedings at that meeting. The chairperson may, and if directed by the meeting shall, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting of members is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

***12. Methods of holding meetings***

A meeting of members may be held either by –

*(a)* a number of members, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

*(b)* means of audio, or audio and visual communication by which all members participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

 ***13. Quorum***

(1) Subject to subclause (2) of this clause, no business may be transacted at a meeting of members if a quorum is not present.

(2) A quorum for a meeting of members is present if members or their proxies are present or have cast postal votes who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within 60 minutes after the time appointed for the meeting –

*(a)* in the case of a meeting called under section 106*(b)* of the Act, the meeting is dissolved;

*(b)* in the case of any other meeting the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the managers may appoint; and

*(c)* if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the members or their proxies present are a quorum.

***14. Voting***

(1) In the case of a meeting of members held under subclause 4*(a)* of this clause, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods as determined by simple majority –

 *(a)* voting by voice;

 *(b)* voting by show of hands; or

 *(c)* voting by ballot or by any other electronic means that is widely acceptable.

(2) In the case of a meeting of members held under subclause 4*(b)* of this clause, unless a poll is demanded, voting at meeting shall be by the members signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (5) of this clause.

(4) At a meeting of members, a poll may be demanded by –

*(a)* any number of members having the right to vote at the meeting, or any other number of members as may be determined by the company in view of the total number of members in the company;

*(b)* a member or members representing not less than 10 per cent of the total voting rights of all members having the right to vote at the meeting;

*(c)* a member or members holding contribution in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all contribution that confer that right; or

 *(d)* the chairperson of the meeting.

(5) A poll may be demanded either before or after the vote is taken on a resolution.

(6) If a poll is taken, votes shall be counted according to the votes attached to the contributions of each member present in person or by proxy and voting.

 (7) The chairperson of a members' meeting is not entitled to a casting vote.

(8) For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of a company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a member has the same effect as a demand by the member.

(9) Subject to any rights or restrictions for the time being attached to any contribution, every member present in person or by proxy and voting by voice or by show of hands and every member voting by postal vote (where this permitted) shall have one vote.

(10) The demand for a poll may be withdrawn by ‒

*(a)* not more than five members having the right to vote at the meeting, or any other number of members as may be determined by the company in view of the total number of members in the company;

 *(b)* a member or members representing not less than 10 per cent of the total voting rights of all members having the right to vote at the meeting;

*(c)* a member or members holding contribution in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all contributions that confer that right; or

 *(d)* the chairperson of the meeting.

(11) Except as provided in subclause (12), if a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

(12) A poll demanded on the election of a chairperson or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time and place as the meeting directs, and any business other than that on which a poll has been demanded may be proceeded with pending the taking of the poll.

NOTE: The subclauses of this clause, other than subclauses (7) and (9) to (12), apply notwithstanding any contrary provision in any constitution adopted by the company.

***15. Proxies***

(1) A member may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a member is entitled to attend and be heard at a meeting of members as if the proxy were the members.

(3) A proxy shall be appointed by notice in writing signed by the member and the notice shall state whether the appointment is for a particular meeting or a specified term.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting. Any power of attorney or other authority under which the proxy is signed or a notarial certified copy shall also be produced.

(5) A proxy form shall be sent with each notice calling a meeting of the company, and shall be issued in terms of Annexure I of this constitution.

(6) The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing or in the case of a corporation under the hand of an officer or of an agent duly authorised.

 NOTE: The constitution of a company may provide that a proxy is not effective unless it is produced by a specified time before the start of a meeting if the time specified is not earlier than 24 hours before the start of the meeting. Otherwise the provisions of this clause (apart from the form of proxy given in subclause (4) apply notwithstanding any contrary provision in any constitution adopted by the company.

***16. Postal votes***

(1) A member may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause.

(2) The notice of a meeting at which members are entitled to cast a postal vote shall state the name of the person authorised by the board to receive and count postal votes at that meeting.

(3) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every manager is deemed to be so authorised.

(4) A member may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her contributions are to be voted to a person authorised to receive and count postal votes at that meeting. The notice shall reach that person not less than 48 hours before the start of the meeting.

(5) It is the duty of a person authorised to receive and count postal votes at a meeting –

*(a)* to collect together all postal votes received by him or her or by the company;

 *(b)* in relation to each resolution to be voted on at the meeting, to count –

(i) the number of members voting in favour of the resolution and the number of votes cast by each member in favour of the resolution; and

(ii) the number of member voting against the resolution, and the number of votes cast by each member against the resolution;

*(c)* to sign a certificate that he or she has carried out the duties set out in paragraphs *(a)* and *(b)* of this subclause and which sets out the results of the counts required by paragraph *(b)* of this subclause; and

  *(d)* to ensure that the certificate required by paragraph *(c)* of this subclause is presented to the chairperson of the meeting.

(6) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting shall –

*(a)* on a vote by show of hands, count each member who has submitted a postal vote for or against the resolution; or

*(b)* on a poll, count the votes cast by each member who has submitted a postal vote for or against the resolution.

(7) The chairperson of a meeting shall call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.

(8) The chairperson of a meeting shall ensure that a certificate of postal votes held him or her is annexed to the minutes of the meeting.

***17. Minutes***

(1) The management shall ensure that minutes are kept of all proceedings at meetings of members.

(2) Minutes which have been signed correct by the chairperson of the meeting are *prima facie* evidence of the proceedings.

 ***18. Member’s proposals***

(1) A member may give written notice to the management of a matter the member proposes to raise for discussion or resolution at the next meeting of members at which the members is entitled to vote.

(2) If the notice is received by the management not less than 20 working days before the last day on which notice of the relevant meeting of member is required to be given by the management, the board shall, at the expense of the company, give notice of the member proposal and the text of any proposed resolution to all member entitled to receive notice of the meeting.

(3) If the notice is received by the management not less than five working days and not more than 20 working days before the last day on which notice of the relevant meeting of members is required to be given by the management, the management shall, at the expense of the member, give notice of the member proposal and the text of any proposed resolution to all members entitled to receive notice of the meeting.

(4) If the notice is received by the management less than five working days before the last day on which notice of the relevant meeting of members is required to be given by the management, the management may, if practicable, and at the expense of the member, give notice of the member proposal and the text of any proposed resolution to all members entitled to receive notice of the meeting.

(5) If the managers intend that member may vote on the proposal by proxy or by postal vote, they shall give the proposing member the right to include in or with the notice given by the management a statement of not more than 1000 words prepared by the proposing member in support of the proposal, together with the name and address of the proposing member.

(6) The management is not required to include in or with the notice given by the management a statement prepared by a member which the managers consider to be defamatory, frivolous, or vexatious.

(7) Where the costs of giving notice of the member proposal and the text of any proposed resolution are required to be met by the proposing member, the proposing member shall, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

***19. Controllers of the Company***

The powers exercised in the company shall be under the ultimate effective control of the management, each manager and each member, and ultimately the beneficial owners who exercise ultimate effective control in the company or hold a senior managing position.

Annexure II contains a list of natural persons having ultimate effective control over the company in terms of section 41*(b)* of the Act.

**Annexure I**

(7) The instrument appointing a proxy shall be in the following form - I/we.............................of..................................being member of the above-named company hereby appoint ........................................................................................ Or failing him/her.............................of .................................................................... As my/our proxy to vote for me/us at the meeting of the company to be held on................................................................and at any adjournment of the meeting. Signed this...............................day of...................................... 20..........

**Annexure II Controllers of the Company**



**CONTROLLER’S FORM**

Section 21(2)(c))

**Name of Company Company Number**

Important Note: If there is more than one controller, each of the controller should fill in a separate form.

**CONTROLLER’S DETAILS**

**Controller’s Name:**

**Residential Address:**

**Nature of Association**

**with company i.e., Nature**

**of control**

**For shareholding,**

**state percentage of**

**Contribution held in the**

**company:**

**Signature** ……………………………………………………………………………………………………………

**Date**

**IMPORTANT INFORMATION**

* Beneficial Owner must be a natural person.
* Provide full names and residential address of every beneficial owner including amount to be paid or other consideration.
* Where the Beneficial Owner holds a managerial position in the company, the managerial position must be disclosed. Where some shares are to be held by a foreign company, the identification of natural persons who own, and/or hold shares and control the foreign company must be disclosed.
* beneficial owner’s interest must be expressed in percentage

Completed by:

Postal Address: