**Republic of Botswana**

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

**(As Amended)**

**A Company Limited by Guarantee**

**THE CONSTITUTION**

**of**

**Company Name:**

**Company Registration Number:**

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

1. CONSTITUTION OF A COMPANY LIMITED BY GUARANTEE

 *(section, 37(2), 40)*

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. Objectives of the Company***

The objectives of the company shall be to promote commerce, art, science, religion, charity or any other useful object and shall be provided under Annexure III of this Constitution.

***3. Members meetings***

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

 ***4. Directors***

(1) The directors 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 directors shall not at any time exceed the number fixed pursuant to subclause (2) or by ordinary resolution pursuant to subclause (3).

(2) The first directors and the number of directors shall be determined in writing by the subscribers to the application for incorporation.

(3) The company may by ordinary resolution increase or reduce the number of directors.

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

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

(6) A director shall hold office until removed by special resolution pursuant to section 151(2) of the Act or ceasing to hold office pursuant to section 152 of the Act.

***5. Remuneration of directors***

The remuneration of managers shall be determined in accordance with section 157 of the Act.

***6. Proceedings of director meetings***

Proceedings of meetings of directors shall be conducted in accordance with Part B of this Constitution.

***7. Managing Director***

(1) The director may appoint one or more amongst themselves to the office of Managing Director for such period and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case may revoke that appointment.

(2) If for any reason a managing director ceases to be a director his appointment shall automatically cease.

(3) A managing director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration whether by way of salary, commission or participation in profits as directors may determine.

(4) The directors may entrust to and confer upon the managing director any of the powers exercisable by them with such restrictions as they may think fit, and either generally or to the exclusion of their own powers subject always to section 129 of the Act, and the directors may revoke, alter, or vary, all or any of these powers.

***8. Proceeds***

The company shall not have dividends as the company intends to apply all its profits or other income in promoting the objects of the company and prohibit the payment of any dividend to its members.

 ***9. Winding up***

Subject to the terms of issue of any contributions in the company and 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 to the beneficiaries of the company to fulfil the objectives of the company.

***10. One person companies and companies in which all members are directors***

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 directors, 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 directors 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 directors are dealt with by way of a unanimous resolution.

**PART A**

PROCEEDINGS AT MEETINGS OF MEMBERS

***11. Chairperson***

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

(2) If no chairperson of the board 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 directors 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 director 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.

***12. 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 director, 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.

***13. 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.

***14. 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 directors 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.

***15. 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 the chairperson of the meeting –

 *(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)* not less 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.

(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 shareholders 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.

***16. 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)* a copy of the notice of appointment is produced before the start of the meeting;

 *(b)* A power of attorney or other authority under which the proxy is signed, or a notarial certified copy are produced; and

*(c)* it is produced by a specified time before the start of a meeting if the specified time is not earlier than 24 hours before the start of the meeting.

(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.

(7) A proxy is not effective unless it is produced by a specific time before the start of a meeting if the specified time is not earlier than 24 hours before the start of the meeting.

***17. 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.

***18. Minutes***

(1) The board 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.

 ***19. Member proposals***

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

(2) If the notice is received by the board not less 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 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 board 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 board, the board 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 board 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 board, the board 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 directors intend that members 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 board 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 board is not required to include in or with the notice given by the board a statement prepared by a member which the directors 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.

 ***20. Corporations may act by representative***

A body corporate which is a member may appoint a representative to attend a meeting of members on its behalf in the same manner as that in which it could appoint a proxy.

***21. Loss of voting right if calls unpaid***

If a sum due to a company in respect of a contribution has not been paid, that contribution may not be voted at a member's meeting other than a meeting of an interest group.

**PART B**

PROCEEDINGS AT MEETINGS OF THE BOARD OF A COMPANY

***22. Chairperson***

**(**1) The directors may elect one of their number as chairperson of the board and determine the period for which he is to hold office.

(2) If no chairperson is elected, or if at a meeting of the board the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

***23. Notice of Meeting***

(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with this clause.

(2) Not less than two days' notice of a meeting of the board must be sent by any means of communication to every director who is in Botswana, and the notice must include the date, time, and place of the meeting and the matters to be discussed.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

***24. Methods of holding meetings***

A meeting of the board may be held either –

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

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

***25. Quorum***

(1) A quorum for a meeting of the board shall be fixed by the board and if not so fixed shall be by majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

NOTE: The company may consider and define its own quorum as it deems fit. e.g: 1/2 or 2/3 majority of the Board of Directors or specify the number of Directors required to form a quorum.

***26. Voting***

(1) Every director has one vote.

(2) The chairperson does not have a casting vote.

(3) A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he expressly dissents from or votes against the resolution at the meeting.

***27. Minutes***

The board must ensure that minutes are kept of all proceedings at meetings of the board.

***28. Resolution in writing***

(1) A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

(2) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.

(3) A copy of any such resolution must be entered in the minute book of board proceedings.

***29. Secretary***

The Secretary shall keep all meeting minutes, records of the company and shall be responsible for their correctness. He or she will keep minutes of all General and Committee meetings. He or she shall maintain an up-to-date Register of members at all times.

***30. Controllers of the Company***

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

*(b)* 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- Proxy Form**

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:

**Annexure III ‒ Objectives of a Company Limited by Guarantee**



**OBJECTIVES OF A COMPANY LIMITED BY GUARANTEE:**

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