

**COMPANIES (AMENDMENT) ACT, 2025****No. 3****of 2025****ARRANGEMENT OF SECTIONS****SECTION**

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**An Act to amend the Companies Act.***Date of Assent:* 24.01.2025*Date of Commencement:* 24.01.2025

ENACTED by the Parliament of Botswana.

**1.** This Act may be cited as the Companies (Amendment) Act, 2025, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

**2.** The Companies Act, (hereinafter referred to as “the Act”) is amended in section 2, by —

Amendment of section 2 of Cap. 42:01

(a) substituting for the definition of —

(i) “nominee”, the following new definition —

“nominee” means an individual or legal person instructed by another individual or legal person (the nominator), to act on the nominator’s behalf in a certain capacity regarding a legal person, and

(ii) “nominator”, the following new definition —  
“nominator” means —

(a) an individual or group of individuals, or a legal person that issues instructions directly or indirectly to a nominee to act on the nominee’s behalf in the capacity of a director or a shareholder; or

(b) a shadow director or silent partner; and

(b) inserting in their correct alphabetical order, the following new definitions —

““nominee director (resident director)” means an individual or legal entity that routinely exercises the functions of the director in the company on behalf of, and subject to the direct or indirect instruction of the nominator, and such director is never a beneficial owner of a legal person; and

““nominee shareholder” means an individual or legal entity that exercises voting rights according to instructions of a nominator or receives dividends on behalf of the nominator, and such nominee shareholder is never a beneficial owner of a legal person based on the shares the nominee shareholder holds as a nominee;”.

**3.** The Act is amended by inserting immediately after section 14, the following new section —

“Registrar’s powers to exchange information Cap. 08:04 14A. The Registrar shall exchange the following information held by the corporate registry with other foreign corporate registries or foreign competent authorities —

(a) basic information;  
(b) beneficial owner information;  
(c) nominator and nominee information; and  
(d) any other information.”.

**4.** The Act is amended in section 37 by substituting for subsection (2), the following new subsection —

“(2) A company which, prior to the commencement of this Act, was not required to have a constitution, shall submit to the Registrar, a constitution in the manner set out in the First Schedule, within 12 months from the commencement of this Act, or within a longer period as may be specified by the Minister by Order published in the *Gazette*. ”.

**5.** The Act is amended in section 109 by substituting for the words “Second Schedule” appearing therein, the words “First Schedule”.

Insertion of section 14A in the Act

“Registrar’s powers to exchange information Cap. 08:04 14A. The Registrar shall exchange the following information held by the corporate registry with other foreign corporate registries or foreign competent authorities —

(a) basic information;  
(b) beneficial owner information;  
(c) nominator and nominee information; and  
(d) any other information.”.

Amendment of section 37 of the Act

**4.** The Act is amended in section 37 by substituting for subsection (2), the following new subsection —

“(2) A company which, prior to the commencement of this Act, was not required to have a constitution, shall submit to the Registrar, a constitution in the manner set out in the First Schedule, within 12 months from the commencement of this Act, or within a longer period as may be specified by the Minister by Order published in the *Gazette*. ”.

Amendment of section 109 of the Act

**5.** The Act is amended in section 109 by substituting for the words “Second Schedule” appearing therein, the words “First Schedule”.

Amendment of section 129 of the Act

**6.** The Act is amended in section 129 by substituting for the words “Third Schedule” appearing in subsection (1), the words “First Schedule”.

**7.** The Act is amended by substituting for section 145, the following new section —

“Number of directors 145. A company shall have at least —  
 (a) two directors, if it is a public company;  
 (b) one director, if it is a private company other than a close company; or  
 (c) one director, if it is a foreign company or a company limited by guarantee, ordinarily resident in Botswana.”.

Amendment of section 145 of the Act

**8.** The Act is amended in section 156 by substituting for the words “Fourth Schedule” appearing therein, the words “First Schedule”.

Amendment of section 156 of the Act

**9.** The Act is amended in section 161 by —

(a) substituting for subsection (2) the following new subsection —  
 “(2) A person shall not be appointed as a secretary of a company, unless such person has —  
 (a) been licensed by the Registrar in a manner to be prescribed; and  
 (b) the qualifications as set out in section 162.”;  
 (b) inserting immediately after subsection (2), the following new subsection —  
 “(2A) Any person appointed as a secretary to a company shall comply with subsection (2) (a) within 24 months after the commencement of this Act or within such longer period as may be specified by the Minister by Order published in the *Gazette*.”; and  
 (c) substituting for the word “named” appearing in subsection (3), the word “appointed”.

Amendment of section 161 of the Act

**10.** The Act is amended in section 186 by deleting subsection (2).

Amendment of section 186 of the Act

**11.** The Act is amended by inserting immediately after section 186, the following new section —

“Update of records 186A. (1) Subject to subsection (2), a company shall —  
 (a) keep an up to date record of all beneficial owner information, including beneficial owner information of any shareholder company registered outside Botswana; and  
 (b) update any record held by a legal person.  
 (2) A company shall update and notify the Registrar within 10 days where there is any change, other than a change that has been provided for under the Act, in the information of a legal person, including beneficial owner information.

Insertion of section 186A in the Act

Amendment  
of section 209  
of the Act

(3) Any person who is required under the Act to provide the Registrar with any information, or update any information, shall do so within 10 days of being required to do so.

(4) A company which fails to comply with this section is guilty of an offence and is liable to a penalty set out in section 492.”.

**12.** The Act is amended in section 209 by —

(a) inserting immediately after subsection (1), the following new subsection —

“(1A) An exempt private company shall file financial statements in a form to be prescribed.”; and

(b) substituting for subsection (3), the following new subsection —

“(3) This section applies to any —

(a) public company;

(b) other company in which a public company holds more than 25 per cent of its share capital;

(c) non-exempt private company; and

(d) company which is required by any other enactment to deliver its financial statements to the registrar for registration.”.

**13.** Section 329 of the Act is amended in subsection (1), by substituting for the words “five per cent”, appearing in the definition of “substantial shareholder”, the words “10 per cent”.

**14.** The Act is amended by substituting for section 329A, the following new section —

“Disclosure 329A. (1) A nominee shareholder or director shall —

by nominee (a) disclose his or her status as a nominee shareholder or nominee director; and

shareholder or director (b) disclose the identity of his or her nominator, to the Registrar and the company for inclusion in the register.

(2) The information on the status of the nominee shareholder and the identity of the nominator disclosed under subsection (1) shall be information received at the registration phase of the company as well as any change to such information at any time.

(3) Where the nominator under subsection (1) changes, the nominee shareholder or director shall, within 10 working days, file a notice to that effect with the Registrar.

(4) The nominee shareholder or director shall, upon request by a competent authority, make information identifying his or her nominator available to the competent authority.

(5) A nominee shareholder or director who fails to comply with this section shall be guilty of an offence and is liable to a penalty set out in sections 492 and 493 (2).”.

Amendment  
of section 329  
of the Act

Amendment  
of section  
329A of the  
Act

Insertion of  
section 331A  
in the Act

**15.** The Act is amended by inserting immediately after section 331, the following new section —

“Name of company removed from register of companies not available

331A. Where a company has been removed from the register of companies in accordance with section 331, the Registrar shall not —

- (a) avail the name of such company for registration or public use, for a period of five years from the date of removal; and
- (b) register any company with a name identical to the name of the company whose name has been removed from the register of companies.”.

**16.** The Act is amended by inserting immediately after section 336, the following new section —

“Company trading after removal from register of companies

336A. A company that has been removed from the register of companies in accordance with this Act, and continues to trade, is guilty of an offence and is liable to a penalty set out in sections 492 and 493.”.

Insertion of section 336A in the Act

**17.** The Act is amended in section 341 by —

(a) substituting for subsection (2), the following new subsection —

“(2) Any person who, at the time the company was removed from the register, was —

- (a) a shareholder or director of the company;
- (b) a creditor of the company;
- (c) a liquidator of the company; or
- (d) the Master,

may make an application under subsection (1).”; and

(b) substituting for subsection (4), the following new subsection —

“(4) The Registrar shall —

(a) not restore a company to the register of companies in accordance with subsection (1), where such company has been removed from the register for a period exceeding five years; or

(b) not restore a company to the register of companies if the Registrar receives an objection to the restoration within the period stated in the notice.”; and

(c) inserting immediately after subsection (6), the following new subsection —

“(6A) A company that has been removed from the register of companies due to failure to file an annual return shall within seven days of the payment of such annual return, be restored to the register of companies by the Registrar.”.

Amendment of section 341 of the Act

**18.** The Act is amended in section 342 by inserting immediately after subsection (3), the following new subsection —

“(3A) A company that has been restored to the register of companies under subsection (1) (a) (ii) and (b) shall, upon resolution of the matter before the court, be removed from the register of companies.”.

Amendment of section 342 of the Act

Amendment of section 492 of the Act

**19.** The Act is amended in section 492 (5) by inserting immediately after paragraph (b), the following new paragraphs —

- “(ba) impose an administrative penalty not exceeding P500 000 for any other offence where an administrative penalty is not provided for under the Act; or
- “(bb) issue guidelines for the levying of an administrative penalty not exceeding P500 000 for an offence under paragraph (ba);”.

Amendment of Schedules to the Act

**20.** The Act is amended by —

- (a) substituting for the First Schedule, the following new Schedule —

#### “FIRST SCHEDULE

##### A. CONSTITUTION OF A COMPANY LIMITED BY SHARES (sections 37 (2), 40 (b), 109, 129 (1) and 156)

*(NB: This constitution is intended to act as a guide, and may be altered to meet specific circumstances of each company).*

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 shares mandate**

New shares shall be issued in accordance with section 50 of the Act with the pre-emptive rights provided for in section 52.

##### **3. Transfer of shares**

- (1) *Freedom to Transfer is Qualified:* Every change in the ownership of shares in the capital of the company shall be subject to the following limitations and restrictions.
- (2) *Pre-emptive Provisions:* No share in the capital of the company shall be sold or transferred by any shareholder 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 shareholder including the personal representative of a deceased shareholder or the trustee of the property of an insolvent shareholder who desires to sell or transfer any share or shares shall give notice in writing to the board of such desire;
  - (b) if such notice includes several shares, it shall not operate as if it were a separate notice in respect of each such share, and the proposing transferor shall be under no obligation to sell or transfer some of the shares specified in such notice;

- (c) such notice shall be irrevocable and shall be deemed to appoint the board the proposing transferor's agent to sell such shares in one or more lots to any shareholder or shareholders of the company (including the directors or any of them) at a price to be agreed upon between the party giving such notice and the board or, failing agreement between them within 28 days of the board 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 share, shall be considered to be acting as an expert and not as an arbitrator.

(4) *Offer to Shareholders and Consequent Sale:* The following conditions shall apply —

- (a) upon the price for such shares being agreed on or determined, as the case may be, the board shall immediately give notice to each of the shareholders (other than the person wanting to sell or transfer such shares) stating the —
  - (i) number and price of such shares and inviting each of the shareholders to whom the notice is given to state in writing within 21 days after the date of the notice whether such shareholder is willing to purchase any, and
  - (ii) maximum number of such shares, where such shareholder is willing to purchase any;
- (b) at the expiration of 21 days from the date of the notice, the board shall —
  - (i) apportion such shares amongst the shareholders (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 shares already held by the shareholders respectively, or if there is only one such shareholder, the whole of such shares shall be sold to that shareholder:
    - Provided that no shareholder shall be obliged to take more than the maximum number of shares stated in that shareholder's response to such notice; and
- (c) upon such apportionment being made or such one shareholder notifying such shareholder's willingness to purchase, as the case may be, the party desiring to sell or transfer such share or shares shall be bound, upon payment of the said price, to transfer such share or shares to the respective shareholder or shareholders who have or has agreed to purchase the same and, in default thereof, the board 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 share register as holder or holders of such share or shares so sold.

(5) *Shares on Offer not Taken up by Shareholders:* In the event of all such shares not being sold under the preceding clause within 60 days of the board receiving notice, the party desiring to sell or transfer shall be at liberty within a further period of 30 days to sell the shares not so sold, but not a portion only, to persons who are not shareholders, 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 shareholders under this clause, but every such sale shall nevertheless be subject to the provisions of clause 4.

(6) *Family Transactions:* Any share —

- (a) may be transferred by a shareholder to, or to trustees for, any husband or wife or child or grandchild or son-in-law or daughter-in-law of that shareholder, and any share of a deceased shareholder 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 shareholder; 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 shares standing in the name of the trustee of the will of any deceased shareholder 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. Refusal to register transfers**

Directors' Right to refuse registration: Subject to compliance with the provisions of section 81 of the Act, the board may refuse or delay the registration of any transfer of any share to any person whether an existing shareholder or not —

- (a) if so required by law;
- (b) if registration would impose on the transferee a liability to the Company and the transferee has not signed the transfer;
- (c) if a holder of any such share has failed to pay on due date any amount payable thereon either in terms of the issue thereof or in accordance with the constitution (including any call made thereon);
- (d) if the transferee is a minor or a person of unsound mind;
- (e) if the transfer is in respect of more than one class of shares;
- (f) if the transfer is not accompanied by such proof as the board reasonably requires of the right of the transferor to make the transfer;
- (g) if the pre-emptive provisions contained in clause 3 have not been complied with; or
- (h) if the board acting in good faith decides in its sole discretion that registration of the Transfer would not be in the best interests of the company and/or any of its shareholders.

**5. Purchase or other acquisition of own shares**

- (1) *Authority to Acquire Own Shares:* for the purposes of section 65 of the Act, the company is expressly authorised to purchase or otherwise acquire shares issued by it.
- (2) *Authority to hold own shares:* Subject to any restrictions or conditions imposed by law, the company is expressly authorised to hold shares acquired by it pursuant to section 66 or section 100 of the Act.

**6. Calls on shares and forfeiture of shares**

Calls on shares and forfeiture of shares shall be conducted in accordance with the Seventh Schedule to the Act.

### ***7. Shareholders meetings***

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

### ***8. 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 holder or holders for the time being of the majority of ordinary shares 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 directors 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.

### ***9. Remuneration of directors***

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

### ***10. Proceedings of directors meetings***

Proceedings of meetings of the Board of Directors shall be conducted in accordance with Part B of this Constitution.

### ***11. Managing Director***

(1) The directors 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 the 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.

### ***12. Dividends***

(1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this article as paid on the share.

(2) All dividends shall be authorised by the board pursuant to section 58 of the Act with the approval of an ordinary resolution of shareholders, provided that the board may make payment of an interim dividend where this appears to be justified by the profits of the company and provided the solvency test is satisfied in accordance with section 58 of the Act.

(3) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

(4) The directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

(5) No dividend shall bear interest against the company.

(6) Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or postal or money order sent through the post directed to the registered address of the holder, or in the case of joint holders, to the registered address of that one of the joint holders who is first named on the members' register or to such person and to such address as the holder or joint holders may in writing direct.

(7) Every such cheque or postal or money order shall be made payable to the order of the person to whom it is sent.

(8) Any one of the 2 or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

### ***13. Winding up***

(1) Subject to the terms of issue of any shares 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 shareholders in proportion to their shareholding provided, however, that the holders of shares not fully paid up shall only receive a proportionate share of their entitlement being an amount paid to the company in satisfaction of the liability of the shareholder to the company in respect of the shares either under the constitution of the company or pursuant to the terms of issue of the shares.

(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 shareholders or different classes of shareholders.

**14. One person companies and companies in which all shareholders 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 shareholders also hold office as director, then, for so long as such circumstance continues, the following provisions shall apply —

- (a) new shares may be issued by unanimous resolution signed by the shareholder or shareholders 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 shareholders and directors need not be held provided all matters required by the Act to be dealt with by a general meeting of shareholders or a meeting of directors are dealt with by way of a unanimous resolution.

**PART A****PROCEEDINGS AT MEETINGS OF SHAREHOLDERS****15. Chairperson**

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

(2) If no chairperson of the board has been elected or if, at any meeting of shareholders, 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 shareholders present may choose one of their number to be chairperson of the meeting.

**16. Notice of meetings**

(1) Written notice of the time and place of a meeting of shareholders shall be sent to every shareholder 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 shareholder 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 shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders 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 shareholder 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 shareholders 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.

### ***17. Methods of holding meetings***

A meeting of shareholders may be held either by —

- (a) a number of shareholders, 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 shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### ***18. Quorum***

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

(2) A quorum for a meeting of shareholders is present if shareholders 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 shareholders or their proxies present are a quorum.

### ***19. Voting***

(1) In the case of a meeting of shareholders 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 shareholders held under clause 4 (b) of this clause, unless a poll is demanded, voting at meeting shall be by the shareholders 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 shareholders a poll may be demanded by —

- (a) not less than five shareholders having the right to vote at the meeting, or any other number of shareholders as may be determined by the company in view of the total number of shareholders in the company;
- (b) a shareholder or shareholders representing not less than 10 per cent of the total voting rights of all shareholders having the right to vote at the meeting;
- (c) a shareholder or shareholders holding shares 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 shares 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 shares of each shareholder present in person or by proxy and voting.

(7) The chairperson of a shareholders' 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 shareholder has the same effect as a demand by the shareholder.

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

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

- (a) not less than the majority shareholders having the right to vote at the meeting, or any other number of shareholders as may be determined by the company in view of the total number of shareholders in the company;
- (b) a shareholder or shareholders representing not less than 10 per cent of the total voting rights of all shareholders having the right to vote at the meeting;
- (c) a shareholder or shareholders holding shares 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 shares 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.

**20. Proxies**

- (1) A shareholder may exercise the right to vote either by being present in person or by proxy.
- (2) A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- (3) A proxy shall be appointed by notice in writing signed by the shareholder 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.

**21. Postal votes**

- (1) A shareholder 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 shareholders 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 director is deemed to be so authorised.
- (4) A shareholder 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 shares 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 shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution, and
    - (ii) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and

- (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 shareholder who has submitted a postal vote for or against the resolution; or
  - (b) on a poll, count the votes cast by each shareholder 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 by him or her is annexed to the minutes of the meeting.

### **22. Minutes**

- (1) The board shall ensure that minutes are kept of all proceedings at meetings of shareholders.
- (2) Minutes which have been signed correct by the chairperson of the meeting are *prima facie* evidence of the proceedings.

### **23. Shareholder proposals**

- (1) A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder 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 shareholders is required to be given by the board, the board shall, at the expense of the company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders 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 shareholders is required to be given by the board, the board shall, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders 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 shareholders is required to be given by the board, the board may, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (5) If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they shall give the proposing shareholder 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 shareholder in support of the proposal, together with the name and address of the proposing shareholder.

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

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

***24. Corporations may act by representative***

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

***25. Votes of joint holders***

Where two or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter shall be accepted to the exclusion of the votes of the other joint holders.

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

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

**PART B**

**PROCEEDINGS AT MEETINGS OF THE BOARD OF A COMPANY**

***27. 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.

***28. 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.

***29. 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.

***30. 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.

***31. 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.

***32. Minutes***

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

***33. 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.

***34. The 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 Shareholders at all times.

**PART C**

**SECTIONS OF THIS ACT THAT CONFER POWERS ON DIRECTORS THAT  
CANNOT BE DELEGATED**

***35. Powers that cannot be delegated***

1. The powers exercised in the company shall be as contemplated in this Constitution, and such powers shall regulate and bind the company in terms of section 41 (a) and (b) of the Act.

2. The following sections confer powers on directors which cannot be delegated as per section 129 of the Act;

- (a) section 50 (which relates to the issue of shares);
- (b) sections 53 and 54 (which relates to the consideration for the issue of shares);
- (c) section 58 (which relates to distributions);
- (d) section 61 (which relates to the issue of shares in lieu of dividends);
- (e) Section 62 (which relates to shareholder discounts);
- (f) section 66 (which relates to offers to acquire shares);
- (g) section 73 (which relates to the redemption of shares at the option of a company);
- (h) section 76 (which relates to the provision of financial assistance);
- (i) section 184 (which relates to a change of registered office);
- (j) section 224 (which relates to the manner of approving an amalgamation proposal); and
- (k) section 225 (which relates to short form amalgamations).

***36. Controllers of the Company***

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

2.2 **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**

(7) The instrument appointing a proxy shall be in the following form – I/we.....of.....being shareholders 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  
Number

Company

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

**CONTROLLER'S DETAILS**

Controller's Name:

Residential Address:

Position in the Company/  
Nature of Association  
With company

Percentage of  
Contribution Held:

Signature

.....

Date

**IMPORTANT INFORMATION**

- provide full names and residential address of every beneficial owner including amount to be paid or other consideration.
- where the beneficial owner is a representative, managerial position must be disclosed.
- where some shares are to be held by a foreign company, the identification of natural persons who own, hold shares and control the foreign company must be disclosed.
- beneficial owner's interest must be expressed in percentage

**A.42**

Completed by:

Postal Address:

**B. CONSTITUTION OF A CLOSE COMPANY**  
(*section 37 (1)*)

*(NB: This constitution is intended to act as a guide and may be altered to meet specific circumstances of each company)*

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 transfer or 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 members 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 member 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 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 members 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.

Completed by:

Postal Address:

*(NB: This constitution is intended to act as a guide and may be altered to meet specific circumstances of each company.)*

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 members 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  
Number

Company

Important Note: If there is more than one controller, each of the controllers 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.

Completed by:

**Postal Address:**

### **Annexure III – Objectives of a Company Limited by Guarantee**



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

.”; and

(b) deleting the Second, Third and Fourth Schedules.

PASSED by the National Assembly this 19th day of December, 2024.

DR. GABRIEL GOITSEMODOIMO  
G. MALEBANG,  
*Clerk of the National Assembly.*