

**AS ADOPTED  
BY SPECIAL RESOLUTION  
DATED \_\_\_\_\_**

**REPUBLIC OF BOTSWANA  
THE COMPANIES ACT CAP. 42:01 (AS AMENDED)  
A COMPANY LIMITED BY SHARES**

**CONSTITUTION**

**OF**

**FIRST NATIONAL BANK OF BOTSWANA LIMITED  
(Formerly Financial Services of Botswana Limited)**

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**PRELIMINARY**

In this Constitution, unless the context otherwise requires, words and expressions defined in the Companies Act Cap 42:01 as amended, for the time being in force, shall have the meaning so defined; words importing the singular shall include the plural and vice versa; words importing the masculine gender shall include the feminine and vice versa, and words importing a "person" shall include an individual, firm, corporation, company, business organisation, trust, governmental agency or other entity.

The Regulations contained in the First Schedule to the Act shall not apply to this Company.

**1. INTERPRETATION**

1.1. In this Constitution, unless the context otherwise requires, the following capitalised terms shall have the following meanings:

**"Act"** means the Companies Act Cap 42:01 as amended, for the time being in force;

**"Board"** means the Directors for the time being of the Company or the Directors present at a duly convened meeting of Directors at which a quorum is present;

**"Beneficial Owner"** has the meaning assigned to it under section 2 of the Financial Intelligence Act

<b>"BSE"</b>	means the Botswana Stock Exchange;
<b>"Company"</b>	means First National Bank of Botswana Limited (formerly Financial Services Company Limited),
<b>"Constitution"</b>	means the Constitution of the Company as originally framed, or as altered by special resolution;
<b>"Court"</b>	means the High Court of Botswana;
<b>"CSDB"</b>	means the Central Securities Depository Botswana;
<b>"Director"</b>	includes any person occupying the position of Director or alternate Director of the Company, by whatever name he may be called;
<b>"General Meeting"</b>	means any general meeting of the subscribers or the members of the Company and includes an <b>"Annual General Meeting"</b> defined in paragraph 13.1 ( <i>General Meetings</i> ) and a <b>"Special Meeting"</b> defined in paragraph 13.2 ( <i>General Meetings</i> );
<b>"Ordinary Resolutions"</b>	has the meaning assigned to it under the Act;
<b>"Register"</b>	means the register of members of the Company;
<b>"Registrar"</b>	means the Registrar of Companies or any duly authorised person acting in that capacity;
<b>"Secretary"</b>	includes any official of the Company, regardless of his title, who performs the duties normally performed by a secretary of a company;
<b>"Share"</b>	means a share in the share capital of the Company and "Shares" shall be construed accordingly; and
<b>"Special Resolution"</b>	has the meaning assigned to it under the Act;
<b>"Statutes"</b>	means the Act and every other relevant act or regulation published in the Laws of Botswana, including the Equity Listings Requirements of the BSE

- 1.2. In this Constitution, unless the context clearly indicates otherwise:
  - 1.2.1. if there is any conflict or consistency between the provisions of the Constitution, at any time, the provisions of the Constitution shall prevail over the provisions of any other agreement;
  - 1.2.2. where there is conflict, all necessary steps shall be taken to do all such things as may be necessary and within its powers and control (including voting in favour of all resolutions) from time to time to alter the Constitution insofar as may be appropriate, and to the maximum extent permitted given the provisions of the Companies Act;
  - 1.2.3. if the due date for performance of any obligation in terms of this Constitution is a day which is not a Business Day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding Business Day;
  - 1.2.4. any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Constitution; and
  - 1.2.5. any reference to a notice shall be construed as a reference to a written notice and shall include a notice which is transmitted electronically.
- 1.3. All terms not specifically defined herein that are used but not defined in this Constitution shall have the meanings ascribed to them in the Act, and if not so defined, shall be construed and interpreted according to the ordinary meaning of the words so used.
- 1.4. If the provisions of this Constitution are in any way inconsistent with the provisions of the Act, the provisions of the Act shall prevail and this Constitution shall be read in all respects subject to the Act and the Statutes.
- 1.5. Notwithstanding the omission from this Constitution of any provision to that effect, the Company may do anything which the Act empowers the Company to do if so authorised by this Constitution.

## **2. THE COMPANIES ACT AND LISTING RULES**

### **2.1. Companies Act**

The Company, the Board, each Director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Act except to the extent that, as permitted by the Act, they are negated or modified by this Constitution.

## **2.2. Incorporation of Listing Rules**

Those provisions of the Listing Rules which are required by the Listing Rules to be contained or incorporated by reference in this Constitution, as they may be modified by any ruling of the Exchange relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.

## **2.3 Listing Rules prevail**

While the Company is Listed, if there is any provision in this Constitution that is inconsistent with the Listing Rules relevant to the Company, the Listing Rules shall prevail.

## **2.4 Compliance with Listing Rules**

Subject to the requirements of the Act and any other applicable legislative or regulatory requirement, the Company shall, for so long as it is listed, comply with the Listing Rules and the rules of the CSDB.

## **3. POWERS OF THE COMPANY**

- 3.1. The Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this Constitution should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.
- 3.2. Except to the extent provided otherwise, the legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications.

## **4. COMMISSION**

The Company may pay a commission to any persons in consideration of their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Shares in the Company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any Shares in the Company at any rate not exceeding five per cent of the price at which the said Shares are issued. Such commission may be satisfied by payment in cash or by the allotment of fully paid Shares or partly in cash and partly by the allotment of fully paid Shares. The Company may also on any issue of Shares pay such brokerage as may be lawful.

## **5. PROHIBITED TRANSACTIONS**

The Company shall not give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person in the Company, unless this assistance

is in accordance with section 76 of the Act, and where the Company operates a banking business, with the prior approval of the Central Bank in terms of the Banking Act (Cap 46:04).

## **6. RIGHTS ATTACHING TO SHARES**

6.1. Without prejudice to any special rights previously conferred on the holders of existing Shares in the Company, any Shares in the Company may be issued by the Directors with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of capital or otherwise, as the Company may from time to time by special resolution determine, provided that nothing contained in this paragraph shall entitle any existing shareholders to acquire a greater percentage of the share capital of the Company than that which they already hold.

6.2. Subject to the provisions of the Statutes, the Company may issue preference Shares that are, or at the option of the Company are, liable to be redeemed on such terms and in such manner as the Company before the issue thereof may by special resolution determine provided that the issue be in compliance with the provisions of paragraph 12 (Modification of Rights).

## **7. ISSUANCE OF SHARES**

7.1. If the Company is listed, all shares shall be issued in electronic form in accordance with the rules of the CSDB.

7.2. New shares shall be issued in accordance with the Act and the Listings Requirements, shareholders may in a general meeting authorize the directors to issue new Share or other securities as the directors in their discretion may deem fit.

7.3. Subject to the law and this Constitution, the Company shall be entitled to treat the person whose name appears upon the Register in respect of any Share as the absolute owner thereof.

7.4. The Company shall keep in its register all relevant and required information and documents as demanded and in specified format and form, to remain in compliance with and in alignment to the Financial Intelligence Act (Act 2 of 2022) and other regulatory statutes which may be force at any given time.

7.5. All information, records and documents kept by the company or any register in terms of Clause 7.3 above shall be deemed to be public record and must be so duly availed.

7.6. Fraction Shares will not be issued to any shareholder and will be paid out in cash for the benefit of the shareholder.

## **8. TRUSTS AND JOINT HOLDERS OF SHARES**

8.1. Subject to Section 88 of the Act, no person shall be recognised by the Company as holding any Share upon any trust and the Company shall not be bound by or compelled in any way to

recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or any interest in any fractional part of a Share or any other right in respect of any Share, except an absolute right to the entirety thereof as the registered holder.

8.2. Where two or more persons are registered as the holders of any Share they shall be deemed to hold the same as joint tenants with benefit of survivorship, subject to the following provisions:

8.2.1. the joint holders of any Share shall be liable, severally as well as jointly, in respect of all payments which ought to be made in respect of such Share;

8.2.2. on the death of any one of such joint holders the survivor or survivors shall be the only person or persons recognized by the Company as having any title to such Share; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by a holder;

8.2.3. any one of such joint holders may give effectual receipts for any dividend, bonus or return of capital payable to such joint holders;

8.2.4. only the person whose name stands first in the Register as one of the joint holders of any Share shall be entitled to delivery of the certificate relating to such Share, or to receive notices from the Company, and any notice given to such person shall be deemed notice to all the joint holders;

8.2.5. any one of the joint holders of any Shares for the time being conferring a right to vote may vote either personally or by proxy at any Meeting in respect of such Share as if they were solely entitled thereto, provided that, if more than one of such joint holders be present at any meeting, either personally or by proxy, the person whose name stands first in the Register as one of such holders, and no other, shall be entitled to vote in respect of the said Share.

## 9. **TRANSFER AND TRANSMISSION OF SHARES**

9.1. Shares may be transferred in any usual or common form which the Directors may approve and in accordance with the provisions of this paragraph 9.

9.2. Notwithstanding any other provision of this Constitution, shares in the Company shall be freely transferable and registration of transfer of such shares shall not be subject to any restriction, save to the extent required for compliance with statutory requirements and other applicable statutory instruments.

9.3. The instrument of transfer of any Share in the Company shall be in writing and shall be executed by or on behalf of the transferor, and duly witnessed, and the transferor shall be deemed to remain

the holder of such Share until the name of the transferee is entered in the Register in respect thereof.

- 9.4. Every instrument of transfer shall be left at the transfer office of the company at which it is presented for registration accompanied by the certificate of the securities to be transferred and or such other evidence as the Company may require to prove the title of the transferor or the transferor's right to transfer the securities.
- 9.5. All authorities to sign transfer deeds granted by members for the purpose of transferring securities which may be lodged, produced or exhibited with or to the Company at any of its proper offices shall as between the Company and the grantor of such authorities be taken and deemed to continue and remain in full force and effect and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the company as being in order before the giving and lodging of such notice.
- 9.6. The Company shall not be bound to allow the exercise of any act or matter by an agent for a member unless a duly certified copy of such agent's authority is produced and filed with the Company.
- 9.7. The Company shall be entitled to charge reasonable fees, as the Directors may from time to time determine, for registering any letters of administration, certificates of marriage or death, or other instrument relating to or affecting the title of any Shares.
- 9.8. On the death of any member (not being one of two or more joint holders of a Share) the executor or administrator of the member's estate, lawfully appointed holding office as such for the time being, shall be the only person recognised by the Company as having any title to the Share or Shares registered in the member's name.
- 9.9. Any persons becoming entitled to a Share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the Directors, have the right, either to be registered as members in respect of the Shares or instead of being registered themselves, to make such transfer of the Shares as the deceased or insolvent could have made; but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or insolvent before the death or insolvency, Nothing herein contained shall release the estate of a deceased joint shareholder from any liability in respect of a Share jointly held by the deceased.

9.10. Any persons becoming entitled to Shares by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which they would be entitled if they were the registered holders of Shares, except that they shall not, unless and until they are registered as members in respect of Shares, be entitled in respect of it to receive notice of, or to exercise any right conferred by membership in relation to meetings of the Company, provided always that the Directors may at any time give notice requiring any such persons to elect either to be registered themselves or to make such transfer as aforesaid, and, if such notice is not complied with within ninety days after service thereof, the Directors may thereafter withhold payment of all dividends and other monies payable in respect of such Share until the requirement of the notice has been complied with.

9.11. Notwithstanding the contrary contained in any section of this Constitution, the Company shall so long as it remains listed on the Botswana Stock Exchange or any other exchange which may exist from time to time within the jurisdiction of Botswana, the Company shall comply with the Rules of the Exchange and the CSDB , which rules shall be those in force from time to time.

#### 10. **ALTERATION OF SHARE CAPITAL**

10.1. The Company may from time to time by special resolution increase the capital by the creation of new Shares, such increase to be of such aggregate amount and to be divided into Shares of such respective amounts as the special resolution shall prescribe.

10.2. No new Shares shall be issued, unless otherwise agreed by the members in General Meeting, otherwise than by offer and distribution to existing members, *pro rata* their shareholding in the Company, unless the proceeds of such issue are to be used for the acquisition of a specific company or specific business or property, or cash, or such other purpose or otherwise as may be agreed by the members in General Meeting.

10.3. Any capital raised by the creation of new Shares shall, unless otherwise provided by the conditions of issue, be considered as part of the original capital, and shall be subject to the same provisions of this Constitution as if it has been part of the original capital.

10.4. Notwithstanding anything to the contrary herein contained, the Company shall not issue to any persons any Shares if, as a result of such issue, the persons to whom the issue is intended to be made or any other person shall acquire directly or indirectly a voting right exceeding twenty per cent of the voting rights, or any right to appoint Directors, unless the prior approval in writing of the Bank of Botswana to the issue shall have been obtained.

## 11. VARIATION OF SHARE CAPITAL

11.1. The Company may by special resolution:

11.1.1. sub-divide its existing Shares or any of them into Shares of smaller amounts than is fixed by this Constitution;

11.1.2. consolidate and divide its capital or any part thereof into Shares of larger amounts than its existing Shares;

11.1.3. reduce its share capital and any capital redemption reserve fund and any share premium account in any manner authorized by law; and in particular, without prejudice to the generality of the power hereby conferred, extinguish or reduce the liability on any of its Shares, cancel any paid up share capital which is lost or unrepresented by available assets, or either with or without extinguishing or reducing the liability on any of its Shares, pay off any paid up share capital which is in excess of the wants of the Company; and

11.1.4. cancel Shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person and diminish the amount of its stated capital by the amount of the Shares so cancelled.

11.2. The Directors may resolve that any return of capital made to all or any members whose registered addresses are outside the Republic of Botswana or who have given written instructions requesting payment at addresses outside the Republic of Botswana, and/or all or any holder of Share warrants to bearer, shall be paid in such other currency or currencies as may be stipulated by the Directors. The Directors may also stipulate the date (**the "Currency Conversion Date"**) upon which, and a provisional rate of exchange at which, the currency of the Republic of Botswana shall be converted into such other currency or currencies, provided such Currency Conversion Date shall be within a period of thirty days prior to the date of payment. If, in the opinion of the Directors, there is no material difference between the rate/s of exchange ruling on the Currency Conversion Date and the provisional rates/s of exchange stipulated by the Directors then the currency of the Republic of Botswana shall be converted at the latter rate/s. If, in the opinion of the Directors, there is a material difference then the currency of the Republic of Botswana shall be converted into such other currency or currencies at the rate/s or exchange ruling on the Currency Conversion Date. Any subsequent rise or fall of rate/s of exchange determined as above shall be disregarded.

11.3. In the event of a resolution being passed by the Company providing for the Company to be wound up voluntarily, such resolution may provide that any such amounts unclaimed for a period of not less than three years from the date on which such amounts become payable and not previously forfeited may be forfeited by the Directors for the benefit of the Company.

## 12. MODIFICATION OF RIGHTS

- 12.1. If at any time the capital is divided into different classes of Shares, the rights attached to any class or any of such rights (unless otherwise provided by the terms of issue of the Shares of that class) may, subject to the provisions of the Act be modified, abrogated or varied with the consent in writing of the holders of three-fourths of the nominal amount of the issued Shares of that class, or with the sanction of a resolution passed at a separate General Meeting of the holders of the Shares of that class, but not otherwise. To every such separate General Meeting the provisions of paragraphs 13 (*General Meetings*) and 14 (*Notice of General Meetings*) shall, *mutatis mutandis*, apply, but so that (i) at every such separate General Meeting the quorum shall be any member holding or representing by proxy one-fourth of the nominal amount of the issued Shares of the class, and (ii) any holder of Shares of the class present in person or by proxy may demand a poll.
- 12.2. The rights attached to any class of Shares shall not (unless otherwise provided by the terms of issue of the Shares of that class or by the terms upon which such Shares are for the time being held) be deemed to be modified or varied by the creation or issue of further Shares *ranking pari passu* therewith.
- 12.3. The Company may, subject to the provisions of the Act, by special resolution:
- 12.3.1. convert any securities into stock;
  - 12.3.2. convert securities into no par value and vice versa;
  - 12.3.3. convert ordinary shares into redeemable preference shares;
  - 12.3.4. convert securities of any class into securities of any other class, whether issued or not

## 13. GENERAL MEETINGS

- 13.1. The Company shall, not later than six months after the end of each financial year, hold a General Meeting as its annual general meeting (**the "Annual General Meeting"**) in addition to any other meetings in that year, and not more than fifteen months shall elapse between the date of one Annual General Meeting and that of the next. The Annual General Meeting shall be held at such time and place, as the Directors shall appoint.
- 13.2. All General Meetings, other than Annual General Meetings, shall be called **"Special General Meetings"**.
- 13.3. The Directors may, whenever they think fit, and they shall upon a requisition made in writing by members in accordance with section 106 of the Act, convene a Special General Meeting.

- 13.4. If at any time there shall not be present in Botswana and capable of acting, sufficient Directors to form a quorum, the Directors in the Republic of Botswana capable of acting, or if there shall be no such Directors, then any member holding not less than twenty per cent of the issued share capital of the Company may convene an Special General Meeting in the same manner as nearly as possible as that in which General Meetings may be convened by the Directors, and the Company shall have power to elect Directors at such Special General Meeting.
- 13.5. In the case of a Special General Meeting called in pursuance of a requisition, unless such meeting shall have been called by the Directors, no business other than that stated in the requisition as the objects of the meeting shall be transacted.
- 13.6. A General Meeting may be conducted by way of electronic media such as video or telephone conferencing or other virtual meeting and conference facility, which shall enable all members necessary to form a quorum to participate simultaneously.
- 13.7. Notwithstanding the provisions of this Constitution a shareholder who elects to attend any meeting of shareholders which is held by video or telephone conferencing or other virtual meeting and conference facility, participates and/ or votes at said meeting or establishes a communications link to a meeting shall be deemed to be present at that meeting.

#### 14. **NOTICE OF GENERAL MEETINGS**

- 14.1. Subject to paragraph 13.5, General Meetings shall be called by ten (10) days' notice in writing at the least.
- 14.2. The notice shall be given in accordance with the provisions of paragraph 38 (*Notices*) and shall be:
- 14.2.1. exclusive of the day on which it is served or deemed to be served and also of the day for which it is given;
- 14.2.2. given in the manner hereinafter or in such other manner (if any) as may be prescribed by the Company in General Meeting to such persons as are under this Constitution entitled to receive such notices from the Company:
- (i) to the auditors for the time being;
  - (ii) to all members (other than such as are not under the provisions of this Constitution entitled to receive such notices from the Company); and
  - (iii) to every other person who by virtue of the Statutes or this Constitution is

entitled to receive notices of meetings of the Company.

- 14.3. Every notice calling a General Meeting shall specify the place and the day and hour of the meeting, and there shall appear with reasonable prominence in every notice a statement that a member entitled to attend and vote is entitled to appoint one proxy to attend, speak and vote instead of that member.
- 14.4. Every notice calling an Annual General Meeting shall specify the meeting as such and shall include:
  - 14.4.1. the names of the Directors and auditors retiring at the meeting, and also of those Directors whose offices are already vacant and which are to be filled at the meeting;
  - 14.4.2. the names of the persons in respect of whom nominations as Directors and as auditors have been duly given in accordance with the provisions of this Constitution in time for the inclusion of their names in the notice
  - 14.4.3. a reference to the rights of nomination accorded to members.
- 14.5. A General Meeting of the Company shall, notwithstanding that it is called by shorter notice than specified in paragraphs 14.1, be deemed to have been duly called with regard to length of notice if it is so agreed by all the members entitled to attend and vote thereat.
- 14.6. A copy of the annual financial statements should be sent to shareholders along with the notice of the Annual General Meeting, and in any event should be sent at least 10 days before the Annual General Meeting.
- 14.7. The accidental omission to give notice of a General Meeting or (in cases where instruments of proxy are sent out with the notice) the accidental omission to send out the notice) the accidental omission to send instruments of proxy to, or the non-receipt of notice of a meeting or such instrument of proxy by, any person entitled to receive the same and holding less than five per cent of the capital of the Company shall not invalidate the proceedings at that meeting.

## 15. **PROCEEDINGS AT GENERAL MEETINGS**

- 15.1. The business that is transacted at an Annual General Meeting, shall be to receive and consider the accounts and balance sheets, the reports of the Directors and auditors, any other documents required by law to be attached or annexed to the balance sheets, to consider the annual report, to elect Directors in place of those retiring, to elect auditors and fix their remuneration, to approve a dividend declared by the Directors, and to provide for an opportunity for shareholders to question, discuss or comment on the management of the Company in accordance with the Act. All other business shall be deemed special business and shall be specified in the notice calling

the Annual General Meeting as such.

- 15.2. No business shall be transacted at any General Meeting unless a quorum of members is not present, and such quorum shall consist of at least two members entitled to vote present in person or by proxy who hold between them not less than fifty one per cent of the entire issued share capital in the Company, provided that, for so long as the Company is a subsidiary company, the aforesaid quorum shall include an authorised representative of the Company's holding company and for so long as the Company is a wholly owned subsidiary, a quorum shall be established when at least one authorised representative of the Company's holding company is present.
- 15.3. If, within thirty minutes from the time appointed for a General Meeting, a quorum is present, the meeting, if convened by or on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place (but should such day be a public holiday then it shall be adjourned to the first business day next following such public holiday) and if, at such adjourned meeting a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall be dissolved and the Secretary shall upon a date not later than two days after the adjournment, publish in one or more newspapers circulating in the country where the office of the Company is situated, a notice stating:
- 15.3.1. the time and place to which the meeting was adjourned; and
- 15.3.2. that the meeting was adjourned because of the absence of a quorum.
- 15.4. The chairperson (if any) of the Board shall preside as chairperson at every General Meeting of the Company. If there be no such chairperson, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson, the deputy chairperson of the Board shall preside, or if neither the chairperson nor the deputy chairperson is present or willing to preside within fifteen minutes as aforesaid, the members present shall choose another Director as chairperson; or if one Director only be present that Director shall preside if willing to do so. If no Director is present or if all the Directors present decline to take the chair, then the members shall choose one of their own number to act as chairperson.
- 15.5. The chairperson may, with the consent of any General Meeting at which a quorum is present (and shall if so directed by the meeting) 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 is adjourned for thirty 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 adjourned meeting or of the business to be transacted thereat.

- 15.6. At any General Meeting every question shall be decided in the first instance by a show of hands, and, unless a poll is (on or before the declaration of the result of the show of hands) directed by the chairperson, or by one or more members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting or holding Shares in the Company conferring a right to vote at the meeting.
- 15.7. A poll may be demanded by:
- 15.7.1. 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;
  - 15.7.2. 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;
  - 15.7.3. 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
  - 15.7.4. the chairperson of the meeting.
- 15.8. Any person, demanding a poll, can demand a poll immediately after the show of hands result is announced. This can be done verbally during the meeting before the next item of business is taken up.
- 15.9. A declaration by the chairperson that a resolution has been carried or not carried by a particular majority or lost and an entry shall be final and an entry to that effect in the minute book of the Company shall be conclusive evidence of the facts without proof of the number or proportion of the votes recorded in favour of or against such resolution unless a poll is demanded.
- 15.10. Scrutineers shall be elected to count the votes and to declare the result of the poll, and their declaration which shall be announced by the chairperson of the meeting shall be deemed to be the resolution of the meeting at which the poll was demanded. In case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall determine the same, and the determination of the chairperson made in good faith shall be final and conclusive.
- 15.11. The demand for a poll may be withdrawn by:
- 15.11.1. 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;

15.11.2. 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;

15.11.3. 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

15.11.4. the chairperson of the meeting.

15.12. In the case of an equality of votes at any General Meeting, whether upon a show of hands or on poll, the chairperson shall not be entitled to a second or casting vote.

## 16. **VOTES OF MEMBERS AND PROXIES**

16.1. Subject to any special terms as to voting upon which any Shares may for the time being be held, upon a show of hands every member present in person or by proxy shall have one vote but upon a poll every member present or by proxy shall have one vote for every Share held by that member.

16.2. Any shareholder at a meeting of shareholders or any other meeting as set out by this constitution by way of electronic means such as video or telephone conferencing or other virtual meeting and conference facility through the use equipment enabling all participants to communicate directly with one another may vote by any means, as may be determined by the Chairman, enabling votes to be cast in a way that allows them to be verified afterwards, whether the vote is by a functional equivalent of a show of hands or by ballot or otherwise.

16.3. In the case of joint holders of a Share any one of such holders may vote at any General Meeting either in person or by proxy in respect thereof as if they were the sole holder thereof but if more than one of such joint holders be present at any meeting either in person or by proxy that one of such person so present whose name stands first in the Register in respect of such Share shall alone be entitled to vote in respect thereof.

16.4. If any members lack mental capacity they may vote by their *curator bonis* and the parent or guardian may vote on behalf of a minor at a General Meeting, whether on a show of hands or on a poll, in respect thereof in the same manner as if they were the registered holder of the Shares in question, provided that such evidence as the Board may require of the authority of the person claiming to vote shall have deposited at the office of the Company not less than twenty four hours before the time appointed for holding he meeting or for the taking of the poll at which it is desired to vote.

- 16.5. A resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at General Meetings, or being corporations by their duly authorised representatives, shall be as valid and effective as if the same had been passed at a General Meeting duly convened and held, and any such resolution may consist of several documents in like form each signed by one or more of such members or their representatives.
- 16.6. Upon a poll, votes may be given either personally or by proxy and a person entitled to more than one vote need not use all such votes, nor cast all the votes used in the same way.
- 16.7. The instrument appointing a proxy shall be in writing under the hand of the appointer, or of the appointer's attorney duly authorised in writing, or, if such appointer be a corporation, under the hand of an officer or attorney so authorized. A member may appoint two or more persons as proxies in the alternative, but if the appointer does so, only one of such proxies may attend as such and vote instead of such member on any one occasion.
- 16.8. A proxy need not be a member of the Company.
- 16.9. The instrument appointing a proxy, and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power or authority, shall be deposited at the office of the Company not less than twenty four hours before the time fixed for holding the meeting or adjourned meeting at which the person named in such instrument is authorised to vote, or, in the case of a poll, not less than twenty four hours before the time appointed for taking of the poll, and in default the instrument of proxy shall not be treated as valid.
- 16.10. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- 16.11. A vote given or act done in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the appointer, or revocation of the proxy, or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy was executed, or the transfer of the Share in respect of which the proxy was given, unless notice in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at the office at least one hour before the commencement of the meeting or adjourned meeting or poll at which the vote was given or the act was done.
- 16.12. An instrument appointing a proxy shall be in substantially the following form or any other form which the Directors shall reasonably approve:

"FIRST NATIONAL BANK OF BOTSWANA LIMITED

"I, [ ] OF [ ]

BEING A MEMBER OF THE ABOVE-NAMED Company; hereby appoint

[ ] of [ ]

or failing that person [ .....] as my proxy to attend and vote for me on my behalf at the (Annual/Special, as the case may be) General Meeting of the Company, to be held on the [ ] day of [ ]

"Signed this [ ] day of [ ] (month) [ ] (year)

"This form is to be used in favour of/against the resolution.

"Unless otherwise instructed, the proxy will vote as he thinks fit."

#### 17. CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

Any corporation (whether a company within the meaning of the Act or not) which is a member of the Company may by resolution of its Directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company. The person so authorised shall be entitled to exercise the same powers on behalf of such corporation as the corporation could exercise if it were an individual member of the Company.

#### 18. DIRECTORS

18.1. The first Directors shall be nominated, appointed and removed by the majority of the subscribers to this Constitution and subsequent Directors shall be nominated, appointed and removed by ordinary resolution of the Company in General Meeting in accordance with the provisions of this Constitution.

18.2. Unless and until the Company in General Meeting shall otherwise determine, the number of Directors shall be not less than four nor more than thirteen.

18.3. At least one Director must be ordinarily resident in Botswana.

18.4. Of those Directors appointed in terms of paragraph 18.1, for so long as the Company is a subsidiary company, a majority of one half of the total number of the Directors appointed shall be appointees of the Company's holding company.

18.5. Directors shall not be required to hold qualification Shares.

**19. REMUNERATION OF DIRECTORS**

The Directors (excluding the CEO as defined in paragraph 30.1 (*Chief Executive Officer*) and any other director who holds an executive role in the Company, shall be paid out of the funds of the Company by way of remuneration for their services, such sum as the Company in General Meeting shall from time to time determine and/or approve. The Directors shall also be paid such travelling, hotel and other expenses as may be properly and reasonably incurred by them in the execution of their duties, including any such reasonable expenses incurred in connection with their attendance at Board meetings and at General Meetings.

**20. ROTATION OF DIRECTORS**

20.1. Subject to that set out below, at the first Annual General Meeting, all the Directors shall retire from office and at the Annual General Meeting in each subsequent year, one third of the Directors for the time being, or if their number is not three or a multiple of three, then the number nearest to, but no less than one third, shall retire from office. A retiring Director shall hold office until the conclusion of the meeting at which he retires.

20.2. The Directors to retire by rotation at an Annual General Meeting shall be those non-executive Directors who have been longest in office and so that as between persons who became or were last re-elected Directors on the same day those to retire shall (unless they otherwise agree amongst themselves) be determined by lot. The length of time during which a Director has been in office shall be computed from the time when he was last elected or re-elected. A retiring Director shall be eligible for re-election, but no person not being a retiring Director shall be eligible for election to the office of Director at any General Meeting unless nominated by the Board.

20.3. A CEO or other executive Director holding that office for an unexpired term shall not be subject to retirement by rotation under this paragraph or be taken into account in determining the number of Directors so to retire.

**21. ELECTION, ADDITIONS, REMOVAL AND VACANCIES OF DIRECTORS**

21.1. The Company may in General Meeting elect any person that is eligible to be a Director, either to fill a casual vacancy or as an addition to the existing Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed by this Constitution. The power to elect Directors at a Special General Meeting shall be exercised only by special resolution.

21.2. A resolution for the election of two or more persons as Directors by a single resolution shall not

be moved at any General Meeting unless a resolution that it shall be so moved has first been agreed to by the Board without any vote being given against it and any resolution moved in contravention of this provision shall be void.

- 21.3. Notwithstanding any contrary provision contained in this Constitution, the office of a Director may be vacated at the close of the Annual General Meeting of the Company relating to the financial year of the Company in which the Director reaches the age of seventy years. However, an extension may be granted by the Board for such period and on such terms as the Board may determine. Any act done in good faith by a Director whose office is vacated as aforesaid shall be valid unless, prior to the doing of such act, written notice shall have been served upon the Company or an entry shall have been made in the Directors' minute book stating that such Director has ceased to be Director of the Company.
- 21.4. The Company in General Meeting shall fill up any vacancies in the Board of Directors existing or arising at that meeting, unless it is resolved to reduce the number of Directors as set out below.
- 21.5. The Company may by ordinary resolution, of which special notice has been given in accordance with the Act, remove any Director before the expiration of that Director's period of office (notwithstanding anything contained in this Constitution or in any agreement between the Company and such Director) and may by an ordinary resolution appoint another person in that Director's stead. The person so appointed shall be treated for the purpose of determining the time at which that person or any other Director is to retire as if that person had become a Director on the day on which the Director in whose place that person is appointed was last appointed a Director.
- 21.6. If at any General Meeting at which an election of Directors ought to take place, the place of any retiring Director is not filled up, that retiring Director shall, if willing, continue in office until the dissolution of the ordinary meeting in the next year, and so on from year to year until that place is filled up, unless it shall be determined at such meeting not to fill up such vacancy.
- 21.7. Subject to the provisions of paragraph 18.2 (*Directors*) the Company by ordinary resolution in General Meeting may from time to time increase or reduce the number of Directors and alter their qualifications and may also determine in what rotation such increased or reduced number is to go out of office. Whenever such increase is made the shareholders at the said meeting, or failing them, the Directors, may fill up the new seats so created.

## 22. PROCEEDINGS OF DIRECTORS' MEETINGS

- 22.1. The quorum necessary for the transaction of the business of the Board shall be one half of the Directors appointed at any one time, plus one (if that is an even number) or rounded up to the nearest whole number (if that is an odd number), provided that for so long as the Company is a subsidiary company, a Director nominated by the Company's holding company shall be present. Alternatively, a meeting may be conducted by way of electronic media such as video or telephone conferencing or virtual conferencing facilities, which shall enable all members necessary to form a quorum to participate simultaneously.
- 22.2. Notwithstanding the provisions of this Constitution a Director who elects to attend any meeting of directors which is held either in part or wholly by video or telephone conferencing or other virtual meeting and conference facility, participates and/ or votes at said meeting or establishes a communications link to a meeting shall be deemed to be present at that meeting.
- 22.3. Subject to the quorum requirements contained in this Constitution, the Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes:
- 22.3.1. the chairperson shall not have a second or casting vote; and
- 22.3.2. all the Directors present shall vote in the best interests of the Company and shall not be permitted to abstain from voting.
- 22.4. A Director may, and the Secretary on the requisition of a Director shall at any time summon a meeting of the Directors. Notice of a meeting of Directors shall be given to all Directors.
- 22.5. A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the powers, authorities and discretions by or under this Constitution for the time being vested in or exercisable by the Directors generally.
- 22.6. The continuing Directors may act notwithstanding any vacancies in their body, but if and so long as the number of Directors is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors may act for the purpose of summoning a General Meeting of the Company, but for no other purpose. If there are no Directors able or willing to act, then any member holding not less than twenty per cent of the issued share capital of the Company may summon a General Meeting for the purpose of appointing Directors.
- 22.7. The Board shall elect from its own number a chairperson and may elect a deputy chairperson and

one or more vice chairpersons. All such officers shall hold office until the first Board meeting in the year following their election, but they shall be eligible for re-election. The Board for the remainder of the current year may fill up any casual vacancy in the office of chairperson or deputy or vice chairperson.

22.8. The chairperson shall preside at meetings of the Board, but if at any time there is no chairperson or if at any meeting the chairperson be not present, the deputy chairperson shall preside. In the event that there be no chairperson or deputy chairperson or if neither of them is present within five minutes from the time appointed for holding the meeting, then the Directors present shall choose one of the vice chairpersons, or failing any vice chairpersons, one of their own number to be chairperson of the meeting.

### **23. RESOLUTIONS OF THE DIRECTORS WITHOUT A MEETING**

A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of Directors and annexed or attached to the Directors' minute book, shall be as effective for all purposes as a resolution of the Directors passed at a meeting duly convened, held and constituted. Any such memorandum may consist of several documents in like form each signed by one or more of such Directors.

### **24. ALTERNATE DIRECTORS**

24.1. For so long as the Company is a subsidiary company, any Director nominated by the Company's holding company and any other Director nominated by or acting on behalf of corporations, shall be entitled to nominate one alternate Director to act as alternate Director in that Director's place, during his absence or inability to act as Director. The appointment of such alternate Director shall be approved by the Board and any other regulatory authority as may be required by law or the Company.

24.2. On appointment, an alternate Director, whilst so acting shall:

24.2.1. be subject in all respects to the terms, qualifications and conditions existing with reference to the other Directors of the Company;

24.2.2. exercise and discharge all the functions, powers and duties as a Director of the alternate Director's appointer in such appointer's absence; and

24.2.3. look for remuneration from that alternate Director's appointer and shall have no claim against the Company for such remuneration.

24.3. The appointment of an alternate Director shall be cancelled and the alternate Director shall cease

to hold office whenever the Director who appointed the alternate shall cease to be a Director or shall give notice in writing to the Secretary that such alternate Director representing that Director shall have ceased to do so. A Director retiring at any General Meeting and being re-elected shall not for the purpose of this paragraph, be deemed to have ceased to be a Director.

## 25. POWER OF DIRECTORS

- 25.1. The business and management of the Company shall be managed by the Board, which may exercise all such powers of the Company as are not by the Statutes or by this Constitution required to be exercised by the Company in General Meeting, but no resolution so passed by the Company shall invalidate any prior act of the Board which would have been valid if such resolution had not been passed. The general powers given by this paragraph shall not be limited or restricted by any special authority or power given to the Board by any other paragraph. In exercising all such powers as aforesaid however, the Board shall conform to any charter or guidelines dealing with, among other things, good corporate governance and "best practice", which may from time to time be adopted by the Board or the Company in General Meeting.
- 25.2. The Directors may delegate any of their powers to any committees as it may think fit including the power to sub-delegate. Such committees may include, but shall not be limited to, an audit committee, remuneration committee, senior credit committee and risk committee. Any committee so formed may consist of one or more members of the Board, and the Board shall also be entitled to appoint such other person or persons as it considers expedient to a committee but so that at least one of the members of any such committee shall consist of a Director appointed by the Company. Any such committee shall in the exercise of the powers so delegated conform to any resolution that may from time to time be imposed by the Board. The Board may at any time dissolve, or revoke any delegation made to any committee established under this paragraph.
- 25.3. The meetings and proceedings of any such shall be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board, so far as the same are applicable and are not superseded by any resolution imposed upon the Board under paragraph 25.1 above.
- 25.4. All acts done by any meeting of the Board, or of a committee of the Board, or by any person acting as a Director, shall as regards all persons dealing in good faith with the Company, notwithstanding that there was some defect in the appointment or continuance in office of any member of the Board or such committee or person acting as aforesaid, or that they or any of them were disqualified or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or a member or such committee and had been entitled to vote.

- 25.5. In circumstances where the Company holds shares in another company, the Directors may, with the approval of a resolution of the Company in General Meeting, exercise the voting powers conferred by such shares in such manner as it thinks fit, including the exercise thereof in favour of any resolution appointing any members of the Board as Directors or officers of such other company, or voting or providing for the payment of remuneration to the Directors or officers of such other company.
- 25.6. The Directors may declare a dividend in accordance with the provisions of paragraph 33 (*Dividends*).
- 25.7. No Director shall enter into any of the following transactions on behalf of the Company without the prior approval of a resolution passed by the Board in terms of this Constitution (in respect of which resolution the Directors appointed by the Company's holding company and included in the quorum or comprising the quorum, as the case may be, have voted in favour):
- 25.7.1. the acquisition of any Shares, debentures or other securities and/or the disposal of any Shares, debentures or other securities of the Company;
  - 25.7.2. the acquiring and/or establishing of any other business or company;
  - 25.7.3. the disposal and/or transfer of the whole or a substantial part of the business of the Company;
  - 25.7.4. the merging or amalgamating of the business of the Company with any other business;
  - 25.7.5. the material expansion or diversification of the business activities of the Company;
  - 25.7.6. the incurring of any capital expenditure other than that which may have been approved in the Company's relevant operating budget;
  - 25.7.7. the mortgaging, pledging or encumbering, in any manner whatsoever, of any of the Company's movable, immovable, corporeal or incorporeal assets;
  - 25.7.8. the incurring of any borrowings other than short-term loans and overdraft facilities incurred in the ordinary course of the Company's business;
  - 25.7.9. the guaranteeing of any obligation of any subsidiary company or branch of the Company's business in favour of any person;
  - 25.7.10. the adopting of any information technology ("IT") or other system or process that entails

a shift in the Company's relevant IT or other policy or strategy;

25.7.11. the entering into of any material contract or the conclusion of any material transaction.

25.8. Any person contracting with the Company in respect of any of the aforesaid transactions shall be entitled to request and receive from the Company a copy of the relevant resolution passed by the Board, certified as a true copy in terms of this Constitution,

25.9. It is hereby declared pursuant to the provisions of the Statutes that although the Board shall have power to enter into a provisional contract for the sale or alienation of the undertaking of the Company, or the whole or the greater part of the assets of the Company, such provisional contract shall only become binding on the Company in the event of the specific transaction proposed by the Board being ratified and confirmed by the Company in General Meeting.

25.10. The Board may from time to time and at any time by power of attorney or otherwise appoint any company, firm, or person or any fluctuating body of persons, whether nominated directly or indirectly by the Board, to be the legal practitioner or legal practitioners of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution) and for such period and subject to such conditions as it may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such legal practitioners as the Board may think fit and may also authorise any such legal practitioner to delegate all or any of the powers, authorities and discretions vested to that legal practitioner.

## 26. **BORROWING POWERS OF DIRECTORS**

26.1. The Board may in its discretion borrow or raise from time to time such amounts as it deems fit for the Company's purposes: provided that it will be obliged to procure (and as regards any subsidiaries of the Company, only insofar as by the exercise of voting and other rights or powers of control exercisable by it, the Board can so procure) that the aggregate principal amount at any one time outstanding in respect of monies so borrowed or raised by:

26.1.1. the Company; and/or

26.1.2. all its subsidiaries for the time being,

shall not without the prior written approval of the Company's holding company, exceed the amount for the time being authorised to be borrowed or secured in the aggregate by the Directors of the Company's holding company. For the purposes of this paragraph, the expression "holding company" means the body corporate listed or quoted on the JSE Securities Exchange, South Africa, of which the Company's holding company is a

subsidiary. Nevertheless, no lender or other person dealing with the Company shall be concerned to see or enquire whether this limit has been observed.

- 26.2. For the purposes of the aforesaid provisions, "borrowing" will not include:
- 26.2.1. funds borrowed or raised by or deposited with or any undertaking, guarantee or suretyship given in the course of its business by the Company or any subsidiary of the Company while registered as a banking institution or bank under any law of Botswana or of any country outside of Botswana;
  - 26.2.2. funds borrowed or raised by the Company from any of its subsidiaries or its holding company or by any of the Company's subsidiaries from it or its holding company or any other subsidiary of its holding company;
  - 26.2.3. such proportion of borrowings of a partly owned subsidiary as represent the minority interest.
- 26.3. The aforesaid approval will not be required for the borrowing of any monies intended to be applied and which are actually applied within ninety days to the repayment (with or without any premium) of any monies then already borrowed and outstanding, notwithstanding the fact that that new borrowing may result, as at the date thereof, in the aforesaid limit being exceeded.
- 26.4. Except to the extent permitted by the Statutes the Company shall not make any loan to any of the Directors or to any Director of any company which is its holding company or enter into any guarantee or provide any security in connection with any such loan.
- 26.5. The Directors may raise or secure the payment or repayment of such moneys in such manner and upon such terms and conditions in all respects as they think fit, and in particular by mortgage bonds or by the issue of debentures of the Company charged upon all or any part of the property of the Company (both present and future).
- 26.6. Debentures and other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued.
- 26.7. Any debentures, bonds or other securities may be issued at par or at a discount or at a premium, and with any special privileges as to redemption, surrender and drawings, provided that no special privileges as to allotment of Shares, attention and voting at General Meetings, appointment of Directors or otherwise shall be given save with the sanction of the Company in General Meeting.
- 26.8. The Directors shall cause a proper register to be kept in accordance with the provisions of the

Statutes of all mortgages and charges specifically affecting the property of the Company, and they shall cause to be entered in such register in respect of each mortgage or charge, the amount of charge created, the name of the mortgagee or person entitled to such charge and such further particulars as the provisions of the Statutes require.

26.9. Any debentures or other securities issued or to be issued by the Company shall be under the control of the Directors, who may issue them upon such terms and condition and in such manner and for such consideration as they shall consider to be for the benefit of the Company.

## 27. **HOLDING OF OFFICE**

27.1. A Director may enter into or be interested in contracts or arrangements with the Company and may have or be interested in dealings of any nature whatsoever with the Company and shall not be disqualified from office thereby. No such contract, arrangement or dealing shall be liable to be avoided, nor shall any Director so contracting, dealing or being so interested be liable to account to the Company for any profit arising out of any such contract, arrangement or dealing to which he is party or in which he is interested by reason of his being a Director of the Company.

27.2. Directors who in any way, whether directly or indirectly, are interested in a contract or proposed contract which has been or is to be entered into by the Company, shall declare the nature and extent of their interest as provided by section 135 of the Act. Directors shall not vote in respect of any contract or arrangement in which they are interested.

27.3. Directors may be or continue to be or may become Directors or other officers or servants of or otherwise be interested in any other company in which the Company is or becomes in any way interested, and shall not (in the absence of agreement to the contrary) be liable to account to the Company for any emoluments or other benefits received or receivable by them as Directors, or officers or servants of, or from their interest in such other company.

27.4. The Directors may exercise or procure the exercise of the voting rights attached to shares in any other company in which this Company is or becomes in any way interested, and may exercise any voting right to which they are entitled as Directors of any such other company, in such manner as they shall in their absolute discretion think fit, including the exercise thereof in favour of any resolution appointing themselves or any of them as Directors, officers or servants of such other company and fixing their remuneration as such, and may vote as Directors of this Company in connection with any of the matters aforesaid.

27.5. The Company shall, in accordance with the provisions of the Act, duly keep at the office in respect of each Director, a register of the description and amount of any Shares in or debentures of the Company and in or of other bodies corporate in which any Director is interested, as is required by

such section. Such register shall be open to inspection between the hours of 08h00 and 17h00 during the periods prescribed by the Act and shall also be produced at the commencement of each Annual General Meeting and shall remain open and accessible during the continuance of the meeting to any person attending the meeting.

## 28. DISQUALIFICATION OF DIRECTORS

28.1. Without prejudice to the provisions for retirement by rotation or otherwise herein contained, the office of Director shall *ipso facto* be vacated upon the happening of any of the following events, namely, any Directors:

28.1.1. becoming insolvent, whether by surrendering their estate or by reasons of their estate being provisionally or finally sequestrated, or compounds with their creditors generally;

28.1.2. becoming of unsound mind;

28.1.3. absenting themselves from the meetings of Directors for a period of six months without special leave;

28.1.4. becoming prohibited from being a Director by reason of any order made under the Act;

28.1.5. giving the Company one month's notice in writing that they resign their office as a Director;

28.1.6. are removed from office as provided for in this Constitution;

28.1.7. ceasing to be a Director by virtue of any of the provisions of the Act or becomes prohibited or disqualified from being a Director by virtue or in terms of any of the provisions of the Act;

28.1.8. being removed from office by a resolution of the Board in favour of which at least two thirds of the total number of Directors for the time being shall have voted;

28.1.9. if they have persistently failed to comply with any provision of the Act requiring any return, statement or other document to be lodged with or delivered or sent to or notice to be given to the Registrar or that person has, where the Company has failed to so comply, persistently failed to take all reasonable steps to obtain compliance;

28.1.10. they have carried on the business of the Company recklessly or with the intent to defraud creditors or for any fraudulent purpose or has been convicted of an offence in

connection with that manner of carrying on of business; or

28.1.11. if a non-executive Director has failed to attend at least seventy five per cent of the Board meetings of the Company in any one year, the suitability or not of that non-executive Director continuing in office shall be reviewed at the Annual General Meeting of the Company. However, a non-executive Director who has failed to attend seventy-five per cent of such Board meetings for two consecutive years without valid reasons shall be discharged, subject to any rights they may have under the Act.

## 29. **MINUTES**

29.1. The Directors shall cause minutes to be made in books provided for the purpose:

29.1.1. of all appointments of officers made by the Directors;

29.1.2. of the names of the Directors present at each meeting of the Directors and of any committee of the Directors;

29.1.3. of all resolutions and proceedings at all meetings of the Company and of Directors and of committees of Directors and including all written resolutions of Directors in accordance with the provisions of paragraph 23 (*Resolution of the Directors Without a Meeting*);

and record shall be kept of every Director present at any meeting of the Board or a committee of the Board in whatever practical way.

29.2. Any register, index, minute book, book of account or other book required by this Constitution or the Statutes to be kept by or on behalf of the Company may be kept either by making entries in bound books or by recording them in any other manner. In any case in which bound books are not used, the Board shall take adequate precautions for guarding against falsification and for facilitating its discovery.

## 30. **CHIEF EXECUTIVE OFFICER**

30.1. The Directors may from time to time appoint one or more of their body to be a Chief Executive Officer or Chief Executive Officers ("**CEO**") of the Company (but for a maximum period of five years), and may fix their remuneration either by way of salary or commission or an amount equal to a percentage on dividends declared (not to exceed five per cent), or by a combination of two or more of those modes. Any CEO so appointed shall exercise and perform such functions and duties as may from time to time be prescribed by the Board, or by any other person or persons nominated by the Board to prescribe such functions and duties.

- 30.2. A CEO so appointed shall hold such office for such time as the Directors shall determine and shall not be required to retire by rotation and accordingly paragraph 20 (*Rotation of Directors*) shall not apply.
- 30.3. Every CEO shall, subject to the provisions of any contract between the CEO and the Company with regard to the CEO's employment as such, be liable to be dismissed or removed by the Board, and another person may be appointed in the CEO's place.
- 30.4. The Board may entrust to and confer upon a CEO and/or other executive Director, any of the powers and authorities vested in it upon such terms and conditions and with such restrictions as it thinks fit and either collaterally with or to the exclusion of, and in substitution for, all or any of its powers, and may from time to time (subject to the terms of any agreement entered into in any particular case) revoke, withdraw, alter or vary all or any of such powers and authorities. In exercising the powers and/or authorities entrusted to or conferred upon the CEO, or other executive Director, that person shall comply with any Board resolution that may from time to time be adopted by the Board and, to any extent applicable, with any ordinary or special resolution of the Company.

### 31. **SECRETARY**

- 31.1 The Company shall appoint a secretary or secretaries who shall be resident in Botswana to perform the duties of the Secretary under the Act. No person shall be appointed as secretary unless they hold the requisite qualifications prescribed under the Act and is not barred from holding the role in terms of the Act.
- 31.2 The Secretary shall be appointed by the Board on such terms and for such period as it may think fit. Any Secretary so appointed may at any time be removed from office by the Board, but without prejudice to any claim for damages for breach of any contract of service between the Secretary and the Company. The Board may from time to time appoint any person or persons to the office of deputy or assistant Secretary, and the provisions of this paragraph shall apply *mutatis mutandis* in relation to each such office.
- 31.3 The duties and role of the Secretary shall, inter alia, include:
- 33.1.1 being accountable to the Board as whole, and, through the Chairman, being responsible for the proper administration of all meetings of the Board and its committees;

- 33.1.2 through the Chairman, the responsibility of ensuring that the business of the annual general meeting (and other meetings of the shareholders) are conducted in compliance with all statutory requirements and in accordance with these articles;
- 33.1.3 being responsible for preparation and delivery of all the returns required to be filed with the Registrar and the administration and attending to all statutory matters (including maintenance of the relevant records) pertaining to effecting the change of name of the Company, alteration of the Constitution, issue, increase, reduction and call of shares, register of Charges, notices of change of directors, secretary and registered address and registration of the financial statements where required by the Act;
- 33.1.4 issuing notices of Board and general meetings and responding to all enquires in relation to notices of meetings;
- 33.1.5 attending meetings of the Board and general meetings of shareholders and keeping minutes of those meetings, and together with the Chairman, signing the minutes as true and correct records of what transpired at such meetings;
- 33.1.6 being responsible to the Board for maintaining the register of shareholders, debenture holders, directors, secretaries, and Charges;
- 33.1.7 together with the Board, ensuring that the Company keeps accounting records in accordance with the Act and the Constitution and that the financial statements are prepared and presented at the annual general meeting; and
- 33.1.8 being responsible to the Board for maintaining an adequate system of record keeping in relation to the correspondence, the affairs and the activities of the Company.

## 32. AUTHENTICATION OF DOCUMENTS

- 32.1. Subject to the provisions of the Statutes, any Director, or the Secretary, or any person appointed by the Board for the purpose of authenticating documents, shall have power to authenticate any documents affecting the Constitution of the Company and any resolution passed by the Company or the Board or any committee of the Board, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts: and where any books, records, documents or accounts are elsewhere than at the office, the local manager or other officer of the Company having the custody thereof shall be deemed to be a person appointed by the Board as aforesaid.

32.2. A document purporting to be a copy of a resolution, or an extract from the minutes of a meeting of the Company or of the Board or any committee of the Board which is certified as aforesaid shall be conclusive evidence in favour of all persons dealing with the Company upon the faith thereof that such resolution has been duly passed, or as the case may be, that such minute or extract is a true and accurate record of proceedings at a duly constituted meeting.

**33. DIVIDENDS**

33.1. The Company, In General Meeting, may by ordinary resolution approve dividends or interim dividends declared by the Board in relation to any class of Shares, failing which dividends or interim dividends may not be paid, The Company, in General Meeting may not approve a larger dividend than that declared by the Directors.

33.2. Dividends shall be declared payable to members holding the relevant class of Shares to which the dividends relate and who are registered as such on a date which is twenty one days subsequent to the date of the declaration of the dividend. Such date being a Friday, or if that day is a public holiday, the previous business day.

33.3. Without prejudice to anything contained in this Constitution to the contrary, no dividend shall be paid otherwise than out of profits.

33.4. If several persons are registered as joint holders of any Share, or are jointly entitled to a Share in consequence of the death or insolvency of the holder or otherwise by operation of the law, any one of them may validly claim any dividend or other monies payable or property distributable on or in respect of the Share, and that the receipt of such holder shall be a sufficient discharge for all the joint holders of such Share.

33.5. No dividend or other monies payable on or in respect of a Share shall bear interest as against the Company.

33.6. The Directors may deduct from the dividends payable to any member all such sums of money as may be due from the member to the Company.

33.7. The payment by the Board of any unclaimed dividend or other monies payable on or in respect of a Share into a separate account shall not constitute the Company a trustee in respect thereof and any dividend unclaimed after a period of three years from the date of declaration of such dividend shall be forfeited by resolution of the Board and shall revert to the Company. The Company shall hold monies other than dividends due to shareholders in trust indefinitely until claimed by the shareholders.

33.8. Any dividend declared may be paid in such reasonable ways as the Directors may determine, including in cash, electronically or by cheque or warrant sent through the post to the registered address of the member or person entitled thereto (or, if two or more persons are registered as joint holders of the Share or are entitled thereto in consequence of the death or insolvency of the holder or otherwise by operation of law, to any one of such persons) or to such person and at such address as such member or person or persons may by writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to such person as the holder or joint holders or person or persons entitled to the Share in consequence of the death or insolvency of the holder or otherwise by operation of law may direct and payment of the cheque or warrant by the banker upon whom it is drawn shall be a good discharge to the Company. Every such cheque or warrant shall be sent at the risk of the person or persons entitled to the money represented thereby.

**34. RESERVE FUND**

34.1. Out of the profits remaining at the end of any financial year, after making provision for taxation, bad and doubtful debts or depreciation of assets, and for all such items as are usually provided for by banking institutions, the Board may, before declaring any dividend from time to time, set aside and carry to reserve such sums as it thinks proper which, at the discretion of the Board, shall be applicable for any purpose to which the profits of the Company may properly be applied and pending such application may, at the Like discretion, either be employed in the business of the Company or be invested.

34.2. The Board may divide the reserve into such special funds as it thinks fit and may consolidate into one fund any special funds into which the reserve may have been divided with full power to employ the assets constituting such fund or funds in the business of the Company in any manner authorised by the Company's Constitution. The Board may also, without placing the same to reserve, carry forward any profits.

**35. CAPITALISATION OF PROFITS**

35.1. The Company in General Meeting may, upon the recommendation of the Directors, resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account or otherwise be available for distribution, and accordingly that such sum be set free for distribution among the members who would have been entitled thereto if distributed by way of dividend and in the same proportions, on condition that the same be not paid in cash, but be applied either in or towards paying up any amounts for the time being unpaid on any Shares held by such members respectively, or paying up in full Shares of the Company to be issued, allotted and distributed

credited as fully paid up to and among such members in the proportion aforesaid, or partly in the one way and partly in the other, and the Directors shall give effect to such resolution, provided that a share premium account and a capital redemption reserve fund may, for the purpose of this paragraph, only be applied in the paying up of Shares to be issued to members of the Company as fully paid bonus Shares.

- 35.2. Whenever such a resolution as aforesaid shall have been passed, the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby and all allotments and issues of fully paid Shares or debentures, if any; and generally shall do all acts and things required to give effect thereto with full power to the Directors to make such provision by the issue of fractional certificates or by payment in cash or otherwise as they think fit for the case of Shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further Shares or debentures to which they may be entitled upon such capitalization, or (as the case may require) for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalized of the amounts or any part of the amount remaining unpaid on their existing Shares, and any agreement made under such authority shall be effective and binding on all such members.

## 36. ACCOUNTS

- 36.1. The Directors shall cause proper books of account (being such books of account as are necessary to give a true and fair view of the Company's affairs and to explain its transactions) to be kept with respect to:
- 36.1.1. all sums of money received and expended by the Company, and the matters in respect of which such receipts and expenditure take place;
  - 36.1.2. all sales and purchases of property by the Company; and
  - 36.1.3. the assets and liabilities of the Company
- 36.2. The books of account shall be kept at the office or at such other place or places as the Directors may determine; and shall always be open to inspection by the Directors. The Directors may from time to time by resolution determine whether and to what extent, and at what times and places and on what conditions the books and accounts of the Company, or any of them, shall be open to the inspection of the members (not being Directors) and the members shall have only such rights of inspection as are given to them by this Constitution, the Act or by such resolution as aforesaid.

36.3. A copy of every balance sheet, including every document required by law to be annexed thereto, which is to be laid before the Company in General Meeting, together with a copy of the Directors' report and the auditors report (if auditors have been appointed) shall, not less than twenty one clear days before the date of the meetings, be sent to every member (whether he is or is not entitled to receive notices of General Meetings of the Company), every holder of debentures of the Company (whether he is or is not so entitled) and all other persons so entitled, but this paragraph shall not require a copy of such documents to be sent to any person of whose address the Company is not aware or to more than one of the joint holders any shares or debentures.

### 37. NOTICES

37.1. A notice may be served by the Company upon any member either personally or by sending it through the post addressed to such member at his registered address. If a member has not notified a registered address, that member shall be deemed to have waived his right to be served with notices. Any notice required to be, or which may be given by advertisement shall be advertised in at least at two daily newspapers circulating in the country.

37.2. Any notice, if sent by post, shall be deemed to have been served at the expiration of seventy two hours after the same shall have been posted, and in proving such service, it shall be sufficient to prove that the envelope containing the notice was properly addressed and stamped and put into the post office or into any post-box subject to the control of the Postmaster General (or equivalent) of Botswana.

37.3. A notice may be given by the Company to the person entitled to a Share in consequence of the death or insolvency of a member by sending it through the post in a pre-paid letter addressed to that person by name or by the title of the representative of the deceased, or trustee of the insolvent, or by any like description, at the address, if any, supplied for the purpose by the person claiming to be so entitled or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

37.4. Subject to such restrictions affecting the right to receive notices as are for the time being applicable to the holders of any Shares, notices of every General Meeting shall be given in any manner authorized to:

37.4.1. every member;

37.4.2. the auditor for the time being of the Company;

37.4.3. the Directors;

37.4.4. the committee of the BSE; and

37.4.5. by delivery or by post or by advertisement in a leading newspaper circulating in Gaborone and in the greater part of Botswana.

37.5. No other person shall be entitled to receive notices of General Meetings.

37.6. Notices to the holders of share warrants, (unless the conditions of issue provide otherwise) shall be given by advertisement in Botswana on X-News and a national newspaper.

### 38. INDEMNITY

38.1. Every Director, alternate Director, Secretary, agent, employee or officer for the time being of the Company shall, for so long as the Company is a subsidiary company, be indemnified by the insurance policy that the Company's holding company may, from time to time, make available to its subsidiary companies (the "**Group Insurance Cover**") against all costs, charges, expenses, losses, damages and liabilities incurred by them:

38.1.1. in or about the execution of their duties;

38.1.2. in the exercise of their powers: and/or

38.1.3. otherwise in relation to or in connection with their duties, powers or office;

38.1.4. including (without prejudice to the generality of the preceding wording) any liability incurred in defending any proceedings, whether civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by them as an officer, agent or employee of the Company:

38.1.4.1. in which judgment is given in their favour;

38.1.4.2. in which they are acquitted;

38.1.4.3. in which proceedings are otherwise disposed of without any finding or admission of material breach of duty on their part; or

38.1.4.4. in connection with any application in which relief is granted to them by the Court from liability for negligence, default, breach of duty or breach

of trust in relation to the affair of the Company,

provided always that such indemnification shall only apply to the extent that it is contemplated by the Group Insurance Cover.

### 39. **WINDING-UP**

- 39.1. If the Company shall be would up, the assets remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be applied: first, in repaying to members the amounts paid up on the Shares held by them respectively; and the balance (if any) shall be distributed among the members in proportion to the number of Shares held by them respectively: provided always that the provisions hereof shall be subject to the rights of the holders of Shares (if any) issued upon special conditions.
- 39.2. In a winding up, any part of the assets of the Company including any Shares in or securities of other companies may, with the sanction of a special resolution of the Company, be divided among the members of the Company *in specie*, or may with the like sanction, be vested in trustees for the benefit of such members, and the liquidation of the Company may be closed and the Company dissolved, but so that no member shall be compelled to accept any Shares whereon there is any liability.
- 39.3. Notwithstanding anything to the contrary herein contained the Company shall at all times act, and the shareholders and the Directors shall procure that the Company shall at all times act in compliance with the provisions of the Banking Act No. 13 of 1995 and any regulations published pursuant thereto, as they may be amended from time to time, and as they may apply to the Company.

### 40. **AUDITORS**

- 40.1 The Company shall at each annual general meeting appoint Auditors to hold office until the next annual general meeting.
- 40.2 No Director or other officer of the Company and no person who is a partner of or in the employment of an officer of the Company, and no corporation may be appointed as an Auditor. The duties of the Auditors shall be regulated in accordance with the Statutes.
- 40.3 Subject to the provisions of the Statutes, all acts done by any person acting as an Auditor shall, as regards all persons dealing in good faith with the Company, be valid, notwithstanding that there was some defect in his appointment or that at the time of his appointment he was not qualified for appointment.

**41. KING REPORT ON GOVERNANCE FOR SOUTH AFRICA (“KING CODE”)**

The directors of the Company shall procure that the Company complies with the applicable principles set out in the King Code, as adopted by the Board from time to time..

**42. AUTHENTICATION OF DOCUMENTS**

Any Director or the Secretary or any person appointed by the Directors for the purpose shall have power to authenticate any documents affecting the constitution of the Company (including, without limitation, the Constitution) and any resolutions passed by the Company or the Board, and any books, records, documents and accounts relating to the business of the Company, and to certify copies or extracts as true copies or extracts. Where any books, records, documents or accounts are elsewhere than at the Company's head office, the local manager or other officer of the Company having the custody of them shall be deemed to be a person appointed by the Directors under this Clause.

**43. CONTROLLERS OF THE COMPANY**

43.1 The powers exercised in the Company shall be under the ultimate effective control of the Board, each Director and ultimately the Beneficial Owners who exercise ultimate effective control in the Company or hold a senior managing position.

43.2 Appendix A contains a list of natural persons having ultimate effective control over the company in terms of section 41 (b) of the Act as at the date of registration of the constitution.

**THUS SIGNED AND ADOPTED AT ..... ON THIS ..... DAY OF ..... 2026.**

\_\_\_\_\_  
**CHAIRPERSON**

\_\_\_\_\_  
**COMPANY SECRETARY**

**Appendix A 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 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.

Completed by:

Postal Address: