



## **BBS Limited**

Incorporated in Botswana

Registration number **BW00001057162**

("BBSL" or the "**Company**" or "**BBS Limited**")

### **UPDATE TO SHAREHOLDERS: IRREGULARITIES IN THE NOTICE OF ANNUAL GENERAL MEETING SCHEDULED FOR 30 APRIL 2021**

1. Further to the various updates published by BBSL on the Botswana Stock Exchange X-News platform, BBSL regrets to advise all stakeholders that the annual general meeting scheduled for 30 April 2021 (the "**AGM**") was not convened in accordance with the provisions of the Companies Act [CAP 42:01] (the "**Companies Act**"), the BBSL Constitution, and the Botswana Stock Exchange Equity Listings Requirements (the "**Listings Requirements**"). The method of convening the AGM was subject to gross irregularities.
2. In terms of Article 66.2 of the BBSL Constitution an irregularity in a notice of a meeting may only be "**waived if all the shareholders entitled to attend and vote at the meeting, do attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.**"
3. At the commencement of the AGM the Chairperson of the meeting will ascertain if the shareholders are in a position to waive the irregularity of the AGM notice in terms of Article 66.2 of the BBSL Constitution. The Board is of the view that this is unlikely as the method of providing the notice of the AGM in the first instance dictates that a large number of shareholders did not receive notice of the AGM as required by the BBSL Constitution and the Companies Act.
4. The AGM is therefore unlikely to have been convened in a constitutional manner and is consequently incapable of proceeding. In the event that a rectification of the irregularities in the notice convening the AGM proves impossible, the Company wishes to inform all shareholders that the Chairperson of the BBSL board of directors (the "**Board**") will adjourn the AGM for a period of at least 45 days to give the Company the opportunity to convene an annual general meeting in accordance with the Companies Act, the BBSL Constitution, and/or as the High Court may direct.
5. Stakeholders are further advised that the Company intends to make an application to the High Court in terms of section 108 of the Companies Act for an order directing the manner in which the annual general meeting(s) of the Company will be held or conducted.
6. Following the suspensions of Mr Pius K. Molefe and Mr Siphon H. Showa from duty as Managing Director and Company Secretary respectively, it has come to the attention of the Board that the manner in which the AGM was convened and notified to shareholders was irregular.
7. The background of these irregularities is as follows:
  - 7.1 On or about 1 April 2021, Mr Showa circulated a notice of the AGM (the "**AGM Notice**") on the X-News platform and on the BBSL website. The AGM Notice was also published in several national newspapers.

- 7.2 On or around 15 April 2021, Mr Showa also circulated the AGM Notice to various shareholders by email.
- 7.3 Mr Showa also circulated a bulk text message to approximately 8 000 BBSL shareholders inviting them to register for the AGM by visiting the BBSL website.
- 7.4 Stakeholders are advised that the method in which the AGM Notice was published is inconsistent with the Companies Act and the BBSL Constitution. Accordingly, no valid notice was ever issued by BBSL in respect of the 2020 annual general meeting. In particular—
  - 7.4.1 The AGM Notice was distributed contrary to the requirements of the Companies Act. Sections 512 and 513 of the Companies Act provide clearly that any notice (including a notice of an annual general meeting) to be sent to a shareholder must be sent by facsimile, by post, or by physical delivery to such shareholder.
  - 7.4.2 The AGM Notice, particularly as published on X-News and in print media, did not meet the documentary requirements set by the Companies Act or the Listings Requirements, which require that any notice of an annual general meeting must include with it, amongst others, copies of the proxy forms, annual report, and financial statements.
  - 7.4.3 The AGM Notice, particularly as disseminated by email, did not meet the time requirements set by the Constitution, which requires that written notice of the time and place of a meeting must be given to every shareholder not less than 21 working days before the meeting.
  - 7.4.4 The bulk text messages sent to approximately 8,000 BBSL shareholders do not qualify as a notice of meeting in terms of the Companies Act or the BBSL Constitution.
  - 7.4.5 The AGM Notice included in it resolutions for the consideration of the appointment of certain nominees as new BBSL directors, which nominees had not been vetted by the Board in accordance with their obligations under the BBSL Board Charter. Messrs Molefe and Showa have alleged that these nominees were duly nominated by shareholders, but have thus far failed to explain to the Board how these shareholder proposals were not received or notified to the Board in accordance with Article 53 of the BBSL Constitution.
8. As at 23 April 2021, BBSL had 14 906 shareholders. Stakeholders are therefore advised that the Company was under clear obligation under the Companies Act to deliver the AGM Notice to all shareholders by (a) post; (b) fax; or (c) by physical delivery. This requirement has clearly not been met and is compounded by a failure to provide all BBSL shareholders with sufficient supporting documentation, such as proxy forms and the financial statements, when publishing the AGM Notice.
9. Against this background, it has since become clear to the Company that not all shareholders received notice of the AGM, owing to the manner in which the AGM Notice was published.

10. The Company is aware of the practical challenges of attempting to issue notice to 14 906 shareholders in the manner required by the Companies Act. This challenge must be weighed against the Board's obligations to all BBSL shareholders as well as BBSL's duty to comply with the Companies Act.
11. Accordingly, shareholders are informed that it is the Company's intention to approach the High Court in terms of section 108 of the Companies Act for directions on the form and manner in which the 2020 annual general meeting can be duly convened in accordance with Botswana law. The High Court will be asked to give directions on the form and manner of service of notices to all 14 906 BBSL shareholders on the grounds that it is impractical to notify all of them by post, fax or facsimile.
12. The Chairperson of BBSL, in accordance with the residual powers granted to her under law, wishes to notify stakeholders of the Company's intention to adjourn the proceedings of 30 April 2021 until such a time as directions have been obtained from the High Court if the irregularities of the AGM Notice are not waived by all BBSL shareholders.
13. Finally, the Board wishes to advise shareholders that they respect and will uphold at all times shareholder democracy, particularly the rights of shareholders to nominate, elect and appoint directors of their choice. To this end, the Board invites any shareholder of the Company to issue a shareholder proposal to the Board in terms of Article 53 of the BBSL Constitution pursuant to which such proposal, nominees to the Board and their qualifications are recorded ("**Shareholder Proposal**"). Against receipt of such a Shareholder Proposal, the Board will consider same, and in the event the Shareholder Proposal is in compliance with the BBSL Constitution, the Board will requisition a general meeting for purposes of, amongst other things, considering the Shareholder Proposal and to vote on the resolutions incorporated therein.

**By order of the Board**

**29 April 2021**

The Company is aware of various communications made by Mr Molefe on BBSL letterhead and wishes to advise stakeholders that Messrs Molefe and Showa remain suspended employees until court proceedings are finalised or an investigation into their possible misconduct is completed. Accordingly, such communications should be ignored to the extent that they purport to represent the views of the Company.

