

**CONSTITUTION OF**



**ABSA BANK BOTSWANA LIMITED**

A public company incorporated according to the laws of Botswana  
under company registration number

**BW00001237900**

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**AS ADOPTED BY SPECIAL RESOLUTION PASSED ON THE  
4 DAY OF JULY 2024**

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**TABLE OF CONTENTS**

1. INTRODUCTION .....	4
2. INTERPRETATION.....	7
3. ACT, BANKING ACT AND LISTING RULES.....	11
4. DEBENTURES .....	12
5. LEGAL NATURE AND RIGHTS ATTACHING TO SHARES .....	12
6. CAPITAL .....	14
7. ISSUE OF NEW SECURITIES .....	14
8. COMMISSION.....	17
9. TRANSFER OF SHARES / SECURITIES .....	17
10. DISTRIBUTIONS .....	17
11. FINANCIAL ASSISTANCE ON ACQUISITION OF SHARES .....	19
12. RESERVES.....	19
13. ISSUE OF STATEMENT OF SHAREHOLDERS' RIGHTS .....	19
14. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS.....	20
15. SPECIAL RESOLUTIONS .....	20
16. MANAGEMENT REVIEW BY SHAREHOLDERS .....	21
17. DISSENTING SHAREHOLDER MAY REQUIRE COMPANY TO PURCHASE SHARES .....	21
18. SHAREHOLDER PROPOSALS .....	22
19. ANNUAL MEETINGS OF SHAREHOLDERS.....	22
20. VOTING AT MEETINGS.....	25
21. POWERS AND DUTIES OF THE BOARD .....	27
22. MAJOR TRANSACTIONS .....	32
23. BORROWING POWERS .....	32
24. PROCEEDINGS OF BOARD.....	33
25. MANAGING DIRECTOR - APPOINTMENT AND DISMISSAL .....	35
26. DUTIES AND POWERS OF THE MANAGING DIRECTOR .....	35
27. TERMINATION OF EMPLOYMENT – EXECUTIVE DIRECTOR .....	36
28. INTERESTED DIRECTORS.....	36

29. REMUNERATION, LOANS AND OTHER BENEFITS OF DIRECTORS .....	36
30. INDEMNITY AND INSURANCE FOR DIRECTORS .....	37
31. COMPANY SECRETARY .....	37
32. AUDITORS.....	38
33. ACCOUNTING .....	38
34. PUBLIC OFFERING OF SECURITIES.....	39
35. KING IV REPORT ON GOVERNANCE (“KING IV”).....	39
36. AUTHENTICATION OF DOCUMENTS .....	39
37. MISCELLANEOUS .....	39
38. REMOVAL FROM THE REGISTER .....	42

## 1. INTRODUCTION

### 1.1. Incorporation

The Company is a public company with limited liability established and validly existing under the laws of Botswana. It is Listed on the Botswana Stock Exchange and is a separate legal entity with perpetual corporate existence capable of suing and being sued and has the power and authority to own assets.

### 1.2. Objects of Company

1.2.1. The objects for which the Company has been established include:

- 1.2.1.1. to conduct “banking business” in accordance with the Banking Act;
- 1.2.1.2. to finance or assist in financing customers, clients or other persons in the acquisition, hire, lease or sale of immovable property of every kind and to finance or to assist in financing the acquisition, hire, lease or sale of movable property of every kind and the provision of services, whether by way of personal loan, hire purchase, instalment finance, deferred payment or otherwise; to acquire by assignment or otherwise debts owing to any person or Company and to collect such debts, and generally to act as traders, factors, carriers, merchants or in any other capacity, and to import, export, buy, sell, let on hire, charter, barter, make advances upon, pledge or otherwise deal in movable property of every kind;
- 1.2.1.3. to promote, effect, negotiate, offer for sale by tender or otherwise, guarantee, underwrite, secure the subscription or placing of, subscribe or tender for or procure the subscription of (whether absolutely or conditionally), participate, manage or carry out, on commission or otherwise, any issue, public or private, of the securities of any company, and to lend money for the purpose of such issue;
- 1.2.1.4. to acquire or lease land and to erect buildings thereon primarily required for the conduct of the company’s affairs and from time to time alienate such land or terminate or cede such lease and acquire or hire other of further land for like purposes and to let such portion of the buildings in which the business of the Company is carried on as may not be required for the purposes of the company. To buy in and dispose of immovable property mortgaged to the Company in security of debts;
- 1.2.1.5. to enter into any guarantee, bond, recognizance, contract or indemnity or suretyship and otherwise give security or become responsible for the performance of any obligations or duties by any person or Company and in particular (without prejudice

to the generality of the foregoing) to guarantee, support of secure, whether by

- 1.2.1.6. personal covenant, or by mortgaging or charging all or any part of the undertaking, property and assets, present or future, and uncalled capital of the company, or by both such methods, the performance of the obligations of and the payment of monies secured by or payable under or in respect of the securities of any Company or person, including but (but without limitation) the Company's holding Company(if any) of any subsidiary of the Company or of such holding Company or any Company otherwise associated with Company in business, and to give and take counter guarantees and indemnities, and to receive security for the implementation of any obligation.
- 1.2.1.7. to carry on the business of installing, selling, renting and providing computers, data processing and storage equipment and systems, computer bureau, programming, operating and consultancy services and communication systems of all kinds, and acquiring, leasing, hiring and disposing of electronic and mechanical equipment and machinery, and ancillary chattels and property of every kind or description;
- 1.2.1.8. to carry on the business of carrying on managerial, secretarial, accountancy, consultancy, statistical and any other supervisory, executive and advisory services of whatever kind for or in relation to any person, company, property or business;
- 1.2.1.9. to act as commission agents, forwarding agents, travel and shipping agents, surveyors, architects, valuers, property consultants and managers, land and estate agents, insurance brokers and average adjusters, and generally to undertake all kinds of agency business;
- 1.2.1.10. to acquire (whether by purchase, subscription, exchange, or otherwise) take option over and hold, exchange, deal in, sell, or otherwise dispose of or turn to account, securities of any Company or companies;
- 1.2.1.11. to co-ordinate, finance and manage all or any part of the businesses and operations of any Company which is a subsidiary of or otherwise under the control (direct or indirect) of the Company;
- 1.2.1.12. to sell, exchange, mortgage, let on rent, royalty, share of profit or otherwise, improve, manage, turn to account, grant licences, servitudes, options or other rights over and in any manner deal or dispose of the undertaking, property and assets, (including uncalled capital) of the Company or any part thereof for such consideration as may be thought fit, and in particular for securities, whether fully or

partly paid up, of any other company, and to hold, deal with or dispose of such consideration;

- 1.2.1.13. to amalgamate or enter into a partnership or any profit-sharing arrangement with and co-operate in any way with or assist or subsidise any company, and to purchase or otherwise acquire and undertake all or any part of the business, assets and liabilities of any person or company;
- 1.2.1.14. to invest any monies of the Company not for the time being required for the general purposes of the Company in such investments and securities (other than shares in the Company or its holding company, if any) as may be thought expedient and to hold, sell or otherwise deal with investments or securities;
- 1.2.1.15. to establish or promote or concur in the establishment or promotion of any company;
- 1.2.1.16. to procure the registration or incorporation of the Company in or under the laws of any place outside Botswana;
- 1.2.1.17. to seek and secure openings for the employment of capital in any part of the world, and with the view thereto to employ experts to investigate into and examine the conditions, prospects, value, character and circumstances of any business concerns and undertakings, and generally of any assets, concessions, properties and rights whether in existence or contemplation;
- 1.2.1.18. to enter into any arrangements with any Government authority, international, supreme, municipal, local or otherwise, and to obtain any rights, concessions, and privileges from any such Government or authority to carry out, exercise and comply with any such arrangements, rights, concessions and privileges;
- 1.2.1.19. to take all the necessary and proper steps in the legislature or with any Government or authority, international, supreme, municipal, local or otherwise for the purpose of carrying out, extending or varying the objects and powers of the Company, or altering its constitution, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests;
- 1.2.1.20. to distribute any of the property of the Company among its members in specie;
- 1.2.1.21. to subscribe, donate or guarantee money for any national, charitable, benevolent, public, general, or useful objects or for any exhibition or for any purpose which may be considered likely directly or indirectly to further the objects of the Company or the interests of its members and to subscribe or donate money to any association

or fund for the protection, defence or benefit of any person or companies on businesses similar to those carried on by the Company or any of its subsidiaries.

1.2.1.22. to establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension or superannuation funds for the benefit of, and to give, or procure the giving of donations, gratuities, bonuses, benefits, pensions, allowances or emoluments to any persons who are or were at any time in the employment or service of the Company or of its holding company, or such holding company, or is allied to or associated in business with the Company or with any such subsidiary or the predecessors in business of the Company or any such other Company as aforesaid, or their respective predecessors in business and the wives, widows, families, dependants and personal representatives of any such persons, and also to establish and subsidise or subscribe to any institutions, associations, building and housing schemes , clubs, funds or trusts calculated to be for the benefit of any such persons as aforesaid, or to advance the interest and wellbeing of the Company or for such other Company as aforesaid, and to make payments for or towards for or towards the insurance of any such persons as aforesaid;

1.2.1.23. to carry on any other business or activity which may seem to the Directors capable of being advantageously carried on in connection or conjunction with or as ancillary to any of the foregoing businesses or which the Directors may consider expedient with a view to rendering profitable or more profitable or enhancing directly or indirectly the value of the Company's undertaking or any of its property or assets; and

1.2.1.24. to do all or any of the foregoing things in any part of the world and either as principals, agents, contractors, trustees or otherwise and by or through trustees, agents, subsidiary and associated companies or otherwise, and either alone or in conjunction with others.

1.2.2. Notwithstanding the Company objects set out herein above, it is specifically recorded that the Company shall be restricted from carrying on any business activity that is not within the aforesaid objects.

## 2. **INTERPRETATION**

In this Constitution, the headings of the clauses are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Constitution nor any clause hereof. Unless a contrary intention clearly appears:

2.1. The following terms shall have the meanings assigned to them hereunder and cognate expressions

shall have corresponding meanings, namely:

- 2.1.1. “**Annual Meeting**” means the annual meeting of Shareholders held pursuant to the Companies Act;
- 2.1.2. “**Balance sheet date**” means such date as the Board adopts as the Company's balance sheet date;
- 2.1.3. “**Bank of Botswana Act**” means the Bank of Botswana Act, [Cap 55:01], as may be amended;
- 2.1.4. “**Banking Act**” means the Banking Act, [Cap 46:04], as may be amended;
- 2.1.5. “**Banking Requirements**” means, collectively, the Bank of Botswana Act, the Banking Act, the Licensing Policy, the Corporate Governance Guidelines and any other regulations, guidelines or requirements which may be issued under the Bank of Botswana Act or the Banking Act;
- 2.1.6. “**Board**” means the Directors whose number is not less than the required quorum acting together as the board of Directors of the Company;
- 2.1.7. “**Botswana Stock Exchange**” means the Botswana Stock Exchange Limited, a company incorporated in terms of the Companies Act and it includes its successor or assigns;
- 2.1.8. “**Central Bank**” means the Bank of Botswana established under the Bank of Botswana Act;
- 2.1.9. “**Chairperson**” means the chairperson of the Board elected in terms of this Constitution;
- 2.1.10. “**Class**” means a class of Securities having identical rights, privileges, limitations and conditions and includes or excludes securities which the Company in its discretion deems to be of, or not of, that Class;
- 2.1.11. “**Company**” means Absa Bank Botswana Limited, registration number BW00001237900;
- 2.1.12. “**Companies Act**” means the Companies Act [Cap 42:01], as may be amended;
- 2.1.13. “**Constitution**” means this Constitution and shall include any subsequent amendments thereof by special resolution in accordance with the Companies Act;
- 2.1.14. “**Corporate Governance Guidelines**” means the Guidelines on Corporate Governance for banks / financial institutions licensed and supervised by the Central Bank issued by the Central Bank, pursuant to its authority set forth in the Bank of Botswana Act (CAP 55:01) on 14 November 2022, as may be amended;



- 2.1.15. **"Court"** means the High Court of Botswana;
- 2.1.16. **"Director"** means a person appointed and continuing in office for the time being, as a director of the Company, in accordance with this Constitution;
- 2.1.17. **"General Meeting"** means any meeting of the Shareholders of the Company;
- 2.1.18. **"Interests Register"** means a register kept by the Company at its registered office pursuant to the Companies Act;
- 2.1.19. **"Independent Non-Executive Director"** shall have the meaning assigned to it under the Corporate Governance Guidelines and, to the extent not already covered under the Corporate Governance Guidelines, as may from time to time be designated under and in terms of applicable governance regulations such as, but not limited to, King IV (as defined in clause 35 below) and any code of best practice on corporate governance adopted or recommended by the Securities Exchange;
- 2.1.20. **"Licensing Policy"** means the licensing requirements of the Central Bank set forth in the Licensing Policy paper issued by the Central Bank in accordance with section 6 of the Banking Act and regulations thereunder;
- 2.1.21. **"Listed"** has the meaning given in the Listing Rules;
- 2.1.22. **"Listing Rules"** mean the Securities Exchange listing requirements in force, as amended from time to time;
- 2.1.23. **"Major Transaction"** has the same meaning given in the Companies Act;
- 2.1.24. **"Ordinary Resolution"** means a resolution of Shareholders approved by a simple majority of the votes of those Shareholders entitled to vote and voting on a question;
- 2.1.25. **"Personal Representative"** means:
- 2.1.25.1. in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
  - 2.1.25.2. in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
  - 2.1.25.3. in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under either the Administration of Estates Act [Cap 31:01], as may be amended, or the Insolvency Act [Cap 52:02], as may be amended, or a manager appointed or deemed to have been appointed

thereunder, and a donee of an enduring power of attorney;

- 2.1.26. "**Representative**" means a person appointed as a proxy or representative under clause 20.3 or a Personal Representative;
- 2.1.27. "**Secretary**" includes an official of the Company, regardless of his title, who performs duties normally performed by a company secretary, and the word Company Secretary, bears the same meaning;
- 2.1.28. "**Securities**" has the same meaning assigned to it in the Securities Act [Cap 56:08], as may be amended;
- 2.1.29. "**Securities Exchange**" means the Botswana Stock Exchange and any exchange on which Securities are traded;
- 2.1.30. "**Share**" means a share in the share capital of the Company the issue of and rights attaching to which are provided for by this Constitution, and the word "**Shares**" shall be construed accordingly;
- 2.1.31. "**Shareholder**" means a person:
- 2.1.31.1. registered in the Interests Register as the holder of one or more Shares; and
  - 2.1.31.2. until such time as his, her or its name is entered in the register, a person named as a Shareholder in the application for registration of the Constitution of the Company at the time of incorporation of the Company;
- 2.1.32. "**Solvency Test**" has the meaning given in the Companies Act;
- 2.1.33. "**Special Meeting**" means a special meeting of Shareholders called in accordance with the Companies Act;
- 2.1.34. "**Special Resolution**" means a resolution of Shareholders approved by a majority of 75 percent of the votes of the Shareholders entitled to vote and voting on the resolution; and
- 2.1.35. "**Subsidiary**" means a subsidiary within the meaning of section 6 of the Companies Act.
- 2.2. Words importing:
- 2.2.1. any one gender include the other gender;
  - 2.2.2. the singular include the plural and vice versa;
  - 2.2.3. natural persons include created entities (corporate or unincorporated) and the State and vice

versa; and

2.2.4. a reference to a party in this Constitution includes the party's successors, permitted assigns and nominees.

2.3. When any number of days is prescribed in this Constitution, same shall be calculated exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday.

2.4. Any reference to an enactment is to that enactment as at the date of the effective date hereof and as amended or re-enacted from time to time.

2.5. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

2.6. References to "including" and "in particular" shall not be construed restrictively but shall mean "including, without limitation to the generality of the foregoing" and "in particular, but without limitation to the generality of the foregoing" respectively.

2.7. Any reference to an agreement or other document shall be to such agreement or other document, as amended, supplemented, varied, novated or restated from time to time.

2.8. Any reference to a particular section in an enactment is to that section as at the effective date of this Constitution, and as amended, re-enacted or replaced from time to time and/or equivalent measure in such enactment, provided that, if as a result of such amendment, re-enactment or replacement, the specific requirements of a section referred to in this Constitution are changed, the relevant provision of this Constitution shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.

2.9. Words or expressions that are defined in the Companies Act or in the Listing Rules shall have the same meaning in this Constitution, except as otherwise expressly provided in this Constitution.

2.10. Any schedules attached to this Constitution form an integral part thereof.

### **3. COMPANIES ACT, BANKING ACT AND LISTING RULES**

#### **3.1. Companies Act and Banking Act**

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

### **3.2. 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 Securities 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;

### **3.3. Listing Rules prevail**

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

### **3.4. Compliance with Listing Rules**

3.4.1. Subject to:

3.4.1.1. the terms of any ruling from time to time given by the Securities Exchange; and

3.4.1.2. the requirements of the Companies Act and any other applicable legislative or regulatory requirement, including but not limited to the Banking Act,

the Company shall for so long as it is Listed, comply with the Listing Rules.

## **4. DEBENTURES**

Subject to the provisions of the Companies Act, the Banking Act and the Listing Rules, any debenture shall be issued at such value, and issued at such a discount or at such a premium upon such terms as to:

4.1. conversion, surrender, redemption and drawings;

4.2. interest and the payment thereof;

4.3. attending and voting at general meetings and appointment of Directors; and

4.4. allotment or linkage to shares or stock,

as the Board may in its discretion deem fit.

## **5. LEGAL NATURE AND RIGHTS ATTACHING TO SHARES**

### **5.1. Ordinary Shares**

Each ordinary Share in the Company, as at the date of adoption of this Constitution, confers on the holder the following rights (in addition to the rights set out in this Constitution and/or the Companies Act):

- 5.1.1. subject to the rights of holders of any Shares or other Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- 5.1.2. subject to the rights of holders of any Shares or other Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

## 5.2. **New Shares**

Shares in the Company (including different classes of Shares), which have any one or more of the following features, may be issued:

- 5.2.1. rank equally with, or in priority to, existing Shares in the Company;
- 5.2.2. have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise;
- 5.2.3. confer preferential rights to distributions of capital or income;
- 5.2.4. confer special, limited or conditional voting rights;
- 5.2.5. do not confer voting rights;
- 5.2.6. are redeemable in accordance with section 72 of the Companies Act; or
- 5.2.7. are convertible.

## 5.3. **Fraction Securities**

In the event of a fraction of a Security, that fraction will not be issued to the Shareholder and will be paid out in cash for the benefit of the Shareholder.

## 5.4. **Alteration of rights**

The issue by the Company of any further Shares or Securities which rank equally with, or in priority to, any existing Shares or Securities, whether as to voting rights or distributions, shall:

- 5.4.1. be permitted (subject to clause 7); and
- 5.4.2. not be deemed to be action affecting the rights attached to those existing Shares or Securities.

## 6. CAPITAL

### 6.1. Powers

The Company may:

- 6.1.1. purchase or otherwise acquire Shares issued by it from one or more Shareholders;
- 6.1.2. purchase or otherwise acquire Securities from one or more holders;
- 6.1.3. hold any Shares or other Securities so purchased or acquired;
- 6.1.4. redeem any redeemable Shares or other Securities held by one or more holders;
- 6.1.5. increase its capital;
- 6.1.6. convert its Securities into any other class of Security;
- 6.1.7. cancel its Securities;
- 6.1.8. consolidate and divide the Securities of any Class in proportion to those Securities in that Class; or
- 6.1.9. subdivide the Securities of any Class in proportion to those Securities in that Class.
- 6.1.10. reduce its capital.

in accordance with the provisions, and subject to the restrictions, of the Companies Act, the Banking Act and the Listing Rules.

## 7. ISSUE OF NEW SECURITIES

### 7.1. Right to issue Shares: Board and entitled persons

7.1.1. Subject to clause 7.3 of this Constitution and subject to the prior approval of the meetings of the Shareholders, the Board may from time to time, in accordance with the Companies Act, issue ordinary Shares, and any other Securities provided for by this Constitution, to any person at any time and in any number it considers appropriate.

7.1.2. A Share is issued when the name of the Shareholder is entered as the holder on the register.

7.1.3. All Shares shall be issued in electronic form.

### 7.2. Fully Paid Up Shares

All Shares issued by the Company shall be issued against consideration in cash or kind but fully paid up.

### **7.3. Consideration for issue of Shares**

7.3.1. Subject to clause 7.3.2 of this Constitution, before the Board issues Shares, it shall:

7.3.1.1. determine the amount of the consideration for which the Shares will be issued and the terms on which they will be issued;

7.3.1.2. resolve that, in its opinion, the consideration for the Shares and the terms of the issue are fair and reasonable to the Company and to all existing Shareholders; and

7.3.1.3. have obtained an Ordinary Resolution of Shareholders' approval for the issue of shares.

7.3.2. Clause 7.3.1 of this Constitution does not apply to:

7.3.2.1. the issue of Shares that are fully paid up from the reserves of the Company to all Shareholders of the same Class in proportion to the number of Shares held by each such Shareholder;

7.3.2.2. the consolidation and division of the Shares or any class of Shares in proportion to those Shares or the Shares in that class;

7.3.2.3. the subdivision of Shares or any class of Shares in proportion to those Shares or the Shares in that class; and

7.3.2.4. the issue of Shares on the conversion of any convertible Securities or the exercise of any option to acquire Shares in the Company.

### **7.4. Shares not paid for in cash**

7.4.1. Shares shall be deemed not to have been paid for in cash except to the extent that the Company has actually received cash in payment of the Shares at the time of or subsequently to the agreement to issue the Shares.

7.4.2. Before Shares are credited as fully or partly paid up other than for cash, the Board shall:

7.4.2.1. determine the reasonable present cash value of the consideration; and

7.4.2.2. resolve that, in its opinion, the present cash value of the consideration is fair and reasonable to the Company and to all existing Shareholders, and the present cash value of the consideration is not less than the amount to be credited in respect of the

Shares.

**7.5. Directors' certificate on consideration for issue**

The Directors who vote in favour of a resolution required under clause 7.3 of this Constitution to issue Shares shall sign a certificate:

7.5.1. stating the consideration for, and the terms of, the issue; and

7.5.2. stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the Company and to all existing Shareholders.

**7.6. Directors certificate to be lodged**

A copy of the Directors' certificate given in respect of the consideration for the issue of Shares shall be filed with the registrar of companies for registration within ten working days after the certificate is given.

**7.7. Bonus issues**

Subject to any applicable provisions of this Constitution, the Board may resolve to apply any amount which is available for distribution to Shareholders either:

7.7.1. in paying up in full Shares or other Securities of the Company to be issued credited as fully paid to:

7.7.1.1. the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and

7.7.1.2. if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of those Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or

7.7.2. in paying up any amount which is unpaid on any Shares held by the relevant Shareholders,

or partly in one way and partly in the other.

**7.8. Shares in lieu of dividends**

The Board may issue Shares to any Shareholders who have agreed to accept the issue of Shares,



wholly or partly, in lieu of a proposed dividend or proposed future dividends if:

- 7.8.1. the right to receive Shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all Shareholders of the same class on the same terms that would, if those Shareholders agreed to receive the Shares, maintain the existing voting or distribution rights, or both, of those Shareholders;
- 7.8.2. the number of Shares issued to each Shareholder is in the same proportion as the number issued to all Shareholders in that Class who agree to receive the Shares;
- 7.8.3. the Shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
- 7.8.4. the Shares issued to each Shareholder are issued on the same terms and subject to the same rights as the Shares issued to all Shareholders in that Class who agree to receive the Shares.

## 8. **BROKERAGE COMMISSION**

The Company may on any issue of Shares pay such brokerage commission to any party as may be lawful.

## 9. **TRANSFER OF SHARES / SECURITIES**

- 9.1. Subject to the provisions of this Constitution, Shares and securities of the Company shall be freely transferable and may be transferred by entry of the name of the transferee in the register in accordance with the share transfer system which operates in relation to the trading of Securities on the Securities Exchange.
- 9.2. Any securities registered in the name of a deceased or insolvent shareholder shall not be forfeited if the executor fails to register them in his own name or the name of an heir.

## 10. **DISTRIBUTIONS**

### 10.1. **Solvency Test**

- 10.1.1. The Board may authorise a distribution by the Company at any time, and of an amount, and to the Shareholders, it thinks fit provided it is satisfied on reasonable grounds that the Company will, immediately after the distribution, satisfy the Solvency Test.
- 10.1.2. The Directors who vote in favour of a distribution shall sign a certificate stating that in their opinion the Company will, immediately after the distribution, satisfy the Solvency Test.

### 10.2. **Declaration of dividends**

- 10.2.1. All dividends shall be authorised by the Board pursuant to the Companies Act with the approval of an Ordinary Resolution of Shareholders, provided that the Board may make payment of an interim dividend where this appears to be justified by the profits of the Company and provided the Solvency Test is satisfied in accordance with clause 10.1 of this Constitution.
- 10.2.2. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid, but if any Share is issued on terms providing that it shall rank for dividend as from a particular date, that Share shall rank for dividend accordingly.
- 10.2.3. The Directors may deduct from any dividend payable to any Shareholder all sums of money, if any, presently payable by such Shareholder to the Company on account of calls or otherwise in relation to the Shares of the Company.
- 10.2.4. No dividend shall bear interest against the Company.
- 10.2.5. Any dividend, interest, or other money payable in cash in respect of Shares may be paid by cheques or postal or money order sent through the post directed to the registered address of the holder, or in the case of joint holders, to the registered address of that one of the joint holders who is first named on the Share register, or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or postal or money order shall be made payable to the order of the person to whom it is sent.
- 10.2.6. Any one of the two or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the Shares held by them as joint holders.
- 10.2.7. All dividends unclaimed for a period not less than three years from the date of which the dividends became payable may be declared to be forfeited by the Board for the benefit of the Company. In the event of a resolution being passed providing for the Company to be wound up, such resolution may provide that any dividends unclaimed for a period of not less than three years from the date on which the dividends became payable and not previously forfeited may be forfeited by the Board for the benefit of the Company. Monies other than dividends due to Shareholders will be held in trust by the Company indefinitely until lawfully claimed by the Shareholders.

### 10.3. **Dividends payable pari passu**

- 10.3.1. The Board may not authorise a dividend:

10.3.1.1. in respect of some but not all the Shares in a Class; or

10.3.1.2. that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares in that Class,

unless the amount of the dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under the Constitution of the Company or under the terms of issue of the Share.

10.3.2. If all the Shareholders of the same Class have agreed or concur in writing, a dividend may be authorised otherwise than in accordance with this Constitution.

## **11. FINANCIAL ASSISTANCE ON ACQUISITION OF SHARES**

The Company may not, save in accordance with the provisions of Section 76 of the Companies Act, give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the Company, whether directly or indirectly.

## **12. RESERVES**

12.1. The Board may, before recommending any dividend, set aside out of the profits of the Company such sums as it thinks proper as a reserve which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the Company may be properly applied. Pending application, the sum reserved may either be employed in the business of the Company or be invested in such investments (other than Shares of the Company) as the Board thinks fit.

12.2. The Board may, without placing them to reserve, carry forward any profits which it thinks prudent not to divide.

## **13. ISSUE OF STATEMENT OF SHAREHOLDERS' RIGHTS**

13.1. The Company shall issue to a Shareholder, on request, a statement that sets out:

13.1.1. the Class of Shares held by the Shareholder, the total number of Shares of that Class issued by the Company, and the number of Shares of that Class held by the Shareholder;

13.1.2. the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the Shareholder; and

13.1.3. the relationship of the Shares held by the Shareholder to other Classes of Shares.

13.2. The Company is not obliged to provide a Shareholder with a statement pursuant to this clause 13 if:

13.2.1. a statement has been provided within the previous six months;

13.2.2. the Shareholder has not acquired or disposed of Shares since the previous statement was provided;

13.2.3. the rights attached to Shares of the Company have not been altered since the previous statement was provided; and

13.2.4. there are no special circumstances which would make it unreasonable for the Company to refuse the request.

13.3. A statement issued pursuant to clause 13.1 of this Constitution shall state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.

#### **14. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS**

##### **14.1. Powers reserved to Shareholders**

14.1.1. Powers reserved to Shareholders of the Company by the Companies Act or by this Constitution may be exercised:

14.1.1.1. at an Annual Meeting or a Special Meeting;

14.1.1.2. by a resolution in lieu of a meeting pursuant to the Companies Act; and

14.1.1.3. by unanimous agreement pursuant to the Companies Act.

14.1.2. Unless otherwise specified in the Companies Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

#### **15. SPECIAL RESOLUTIONS**

15.1. When Shareholders exercise a power to approve any of the following, that power may only be exercised by a Special Resolution:

15.1.1. an alteration to or the revocation of this Constitution or the adoption of a new Constitution;

15.1.2. a Major Transaction;

15.1.3. an amalgamation; and / or

15.1.4. the liquidation of the Company.

15.2. Any decision made by Special Resolution pursuant to sub clauses 15.1.1 to 15.1.3 of this clause 15 may be rescinded only by a Special Resolution; a decision made by Special Resolution pursuant to clause 15.1.4 of this clause cannot be rescinded, in any circumstances.

**16. MANAGEMENT REVIEW BY SHAREHOLDERS**

- 16.1. The chairperson of a meeting of Shareholders of the Company shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company.
- 16.2. Notwithstanding anything in the Companies Act or any other clause of this Constitution, a meeting of Shareholders may pass a Special Resolution which makes recommendation relating to the management of the Company and which recommendations shall be binding on the Board.

**17. DISSENTING SHAREHOLDER MAY REQUIRE COMPANY TO PURCHASE SHARES**

- 17.1. When the Shareholders, by a Special Resolution, resolve to exercise a power to approve:
- 17.1.1. an alteration to or the revocation of this Constitution or the adoption of a new Constitution and the proposed alteration imposes or removes a restriction on the activities of the Company;
  - 17.1.2. a Major Transaction; or
  - 17.1.3. an amalgamation,
- and a Shareholder who is entitled to vote on the resolution casts all the votes attached to the Shares which are registered in the shareholder's name and which have the same beneficial owner against the resolution or where the resolution to exercise the power was passed under section 107 of the Companies Act (Resolution in lieu of meeting) and the Shareholder did not sign the resolution, then the Shareholder may within ten working days of the passing of the resolution or ten working days after the date on which notice of the passing of the written resolution under section 107 of the Companies Act was given to the Shareholder, give written notice to the Company pursuant to section 98 of the Companies Act requiring the Company to purchase those shares in accordance with sections 99 to 103 of the Companies Act.
- 17.2. Within 20 working days of receiving a notice from a Shareholder given under clause 17.1 the Board must:
- 17.2.1. agree to the purchase by the Company of the Shares of the Shareholder giving the notice;
  - 17.2.2. arrange for some other person to purchase the Shares;
  - 17.2.3. apply to the court for an order under section 102 (Court may grant exemption) or section 103 (Court may grant exemption if Company insolvent) of the Companies Act;

17.2.4. arrange, before taking the action concerned, for the Special Resolution entitling the Shareholder to give the notice to be rescinded by a Special Resolution, or decide in the appropriate manner not to take the action concerned (as the case may be); and

17.2.5. give written notice to the Shareholder giving notice of the Board's decision under this clause.

17.3. Where the Board agrees, to the purchase of the Shares by the Company, the Board must give notice to the Shareholder in accordance with section 99(2) (Notice requiring purchase), and comply with section 100 (Purchase by Company) of the Companies Act.

## **18. SHAREHOLDER PROPOSALS**

18.1. A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of the Shareholders at which the Shareholder is entitled to vote.

18.2. The notice must be received by the Board not less than twenty-one working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board.

18.3. The Board must give notice of a Shareholder's proposal and the text of a proposed resolution received by it under this clause 18 in the notice of the meeting given to Shareholders and, if the Directors intend that Shareholders may vote on that proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in the notice of meeting a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

18.4. The Board is not required to include in the notice of meeting a statement prepared by a Shareholder which the Board considers to be defamatory, frivolous or vexatious.

## **19. ANNUAL MEETINGS OF SHAREHOLDERS**

### **19.1. Annual Meeting**

19.1.1. The Board shall, in accordance with the Companies Act, call an annual meeting of Shareholders to be held:

19.1.1.1. once in each calendar year other than the year of its registration;

19.1.1.2. not later than three months after the balance sheet date of the Company;

19.1.1.3. not later than fifteen months after the previous annual meeting.

19.1.2. The Company shall hold the Annual Meeting on the date on which it is called to be held.

## 19.2. **Special meetings**

A Special Meeting of Shareholders entitled to vote on an issue:

- 19.2.1. may be called at any time by the Board or a person who is authorised by this Constitution to call the meeting; and
- 19.2.2. shall be called by the Board on the written request of Shareholders holding not less than the percentage of the voting rights entitled to be exercised on the issue, as prescribed under the Companies Act.

## 19.3. **Resolution in lieu of meeting**

- 19.3.1. Subject to the provisions of the Companies Act, a resolution in writing signed by all Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders is as valid as if it had been passed at a meeting of those Shareholders.
- 19.3.2. Such a resolution may consist of several documents in like form, each signed by one or more Shareholders.
- 19.3.3. A facsimile or scanned copy of such signed resolution is as valid and effectual as the original signed document.

## 19.4. **Chairperson of meetings of Shareholders**

- 19.4.1. The chairperson of the Board, if one has been elected and is present at a meeting of Shareholders, shall chair the meeting.
- 19.4.2. If no chairperson has been elected or if, at any meeting of Shareholders, the chairperson is not present within thirty minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of the number to chair the meeting.

## 19.5. **Shareholders entitled to notice of meetings**

- 19.5.1. The Shareholders entitled to receive notice of a meeting of Shareholders are the Shareholders of the relevant class recorded in the register as registered Shareholders:
  - 19.5.1.1. where the Board has fixed a date for the purpose of establishing an entitlement to receive notice, on the date so fixed; or
  - 19.5.1.2. if no date has been fixed by the Board for that purpose, at the close of business on the day immediately preceding the day on which the notice is given.

19.5.2. A date fixed by the Board under clause 19.5.1.1 shall not precede by more than ten working days nor less than twenty-one working days the date on which the meeting is to be held.

**19.6. Notice of meeting**

19.6.1. A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of Shareholders by giving notice in accordance with this clause.

19.6.2. Not less than twenty-one clear days' notice of a meeting of the Shareholders shall be given to every Director, the Securities Exchange, the Shareholders and the auditor of the Company and published in the X News and a national newspaper and the notice shall include the date, time and place of the meeting and the agenda to be discussed. The agenda may be varied at any time prior to the meeting provided notice of amendment is given to every Director, the Securities Exchange, the Shareholders and the auditor of the Company at least seven business days prior to the meeting.

19.6.3. Notice of a meeting may be given by any means, including by telephone, by email or by facsimile. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been received by the Director the day following the date the letter is posted.

**19.7. Contents of notice**

The notice referred to in clause 19.6 of this Constitution shall state:

19.7.1. the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;

19.7.2. the text of any resolution to be submitted to the meeting;

19.7.3. the postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and

19.7.4. that the postal vote shall be received by the person referred to in sub clause 19.7.3 at least forty-eight hours prior to the time of the meeting.

**19.8. Irregularities in notice**

19.8.1. The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings of that meeting.

19.8.2. Notwithstanding clause 19.8.1, an irregularity in a notice of a meeting is 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.

#### **19.9. Method of holding meeting**

A meeting of Shareholders, where notice of the meeting has been given, may be held either:

- 19.9.1. by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 19.9.2. by means of audio, or audio and visual communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

#### **19.10. Adjournments**

If a meeting of Shareholders is adjourned for less than thirty days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

#### **19.11. Minutes**

- 19.11.1. The Board shall ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 19.11.2. Minutes which have been signed as being correct by the chairperson of the meeting are prima facie evidence of the proceedings.

### **20. VOTING AT MEETINGS**

#### **20.1. Quorum**

- 20.1.1. A quorum for a meeting of Shareholders is constituted if those Shareholders or their proxies who are present or who have cast postal votes are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- 20.1.2. No business may be transacted at a meeting of Shareholders if a quorum is not present.
- 20.1.3. If a quorum is not present within thirty minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint, and if, at the adjourned meeting, a quorum is not present within thirty minutes after the time appointed for the meeting, the Shareholders present or their proxies are a quorum.

## 20.2. Voting

20.2.1. Unless a poll is demanded, voting at all General Meetings shall be by whichever of the following methods is determined by the chairperson of the meeting:

20.2.1.1. voting by voice; or

20.2.1.2. voting by show of hands.

20.2.2. Such votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.

20.2.3. A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 20.2.4 of this Constitution.

20.2.4. At a meeting of Shareholders, a poll may be demanded by:

20.2.4.1. a Shareholder or Shareholders representing not less than ten percent of the total voting rights of all Shareholders having the right to vote at the meeting; or

20.2.4.2. by a Shareholder or Shareholders holding the shares that confer a right to vote at a meeting and on which the aggregate amount paid up is not less than ten percent of the total amount paid up on all shares that confer that right.

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

20.2.6. If a poll is taken, votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.

20.2.7. In the case of equality of votes the chairperson of a Shareholders' meeting is entitled to a casting vote.

## 20.3. Proxies and Representatives

20.3.1. A Shareholder may exercise the right to vote either by being present in person or by proxy.

20.3.2. A proxy for a Shareholder is entitled to attend, be heard and vote at a meeting of Shareholders as if the proxy were the shareholder.

20.3.3. A proxy shall be appointed by notice in writing signed by the Shareholder and the notice shall state whether the appointment is for a particular meeting or a specified term not exceeding twelve months.

20.3.4. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company Secretary at least forty-eight hours before the start of the meeting. The chairperson may generally, or in respect of any particular Shareholder, waive the requirements of this clause 20.3.

20.3.5. A juristic person which is a Shareholder may appoint a Representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

## **21. POWERS AND DUTIES OF THE BOARD**

### **21.1. Composition of Board of Directors**

21.1.1. The minimum number of Directors shall be five and the maximum number shall be fifteen, at least two-thirds of which shall be resident in Botswana.

21.1.2. The Board shall be constituted as follows:

21.1.2.1. at least two executive Directors comprising the Managing Director and the Finance Director;

21.1.2.2. such number of non - executive Directors not exceeding thirteen appointed from members of the public who have the necessary knowledge and experience to contribute successfully to the development of the Company; and

21.1.2.3. at least two-thirds of the Directors shall be Independent Non-Executive Directors.

### **21.2. Appointment and removal by notice**

21.2.1. Subject to obtaining prior approval from the Central Bank in accordance with the Banking Requirements, a Director shall be a person appointed from time to time as such by an Ordinary Resolution of Shareholders.

21.2.2. A Director may be removed from office at any time by an Ordinary Resolution of Shareholders.

21.2.3. Subject to the limitation in clause 21.6.4, a Director holds office until he or she resigns, retires, is disqualified or removed as a Director in accordance with the Companies Act, the Banking Requirements and / or this Constitution.

### **21.3. Appointment and removal of Directors by resolution**

21.3.1. Each resolution to appoint a Director must be voted upon individually.

21.3.2. A notice of a meeting at which the removal of a Director will be considered shall state that the purpose of the meeting is the removal of the Director.

#### **21.4. Disqualification**

21.4.1. No person shall be appointed a Director of the Company:

21.4.1.1. if that person is disqualified from becoming a director of a company under section 146 (2) of the Companies Act and the Banking Requirements; and

21.4.1.2. unless the Central Bank has approved the appointment of such person in accordance with the Banking Requirements after determination by the Central Bank that the relevant person is fit and proper in accordance with the Banking Requirements.

#### **21.5. Executive Directors**

21.5.1. The Board may appoint one or more of their number to an executive office including the office of the Managing Director, the Finance Director, and any other executive Director of the Company for such period and on such terms as they think fit. Without prejudice to any claim a Director may have for damages for breach of any contract of service between him and the Company, his appointment shall automatically determine if he ceases from any cause to be a Director, or (subject to the terms of any contract between him and the Company) if the Directors resolve that his term of office as an executive Director should be determined.

21.5.2. A Director holding office pursuant to the last preceding clause, shall receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors may determine. The remuneration shall, unless otherwise agreed, be additional to such remuneration (if any) as is payable to him as a Director.

21.5.3. The Board may entrust to and confer upon a Director holding executive office any of the powers exercisable by them as Directors upon such terms and conditions and with such restrictions as they think fit, and either collaterally with or to the exclusion of their own powers, and may revoke, withdraw or vary any of the powers.

#### **21.6. Rotation of Directors**

21.6.1. Subject to clause 21.6.4, at every Annual Meeting at least one third of the Directors for the time being shall retire from office. The Directors so to retire in each year shall be those who have been longest in office.

- 21.6.2. As between persons who were last elected as Directors on the same day, those to retire, unless they otherwise agree amongst themselves, shall be determined by lot. Notwithstanding anything contained herein, if, at the date of any Annual Meeting any Director shall have held office for a period of three years since his last election or appointment, he shall retire at such meeting, either as one of the Directors to retire in pursuance of the foregoing provisions, or additionally thereto. A retiring Director shall hold office until the conclusion of the meeting at which he retires.
- 21.6.3. Retiring Directors shall be eligible for re-election, but no person not being a retiring Director shall be eligible for election to the office of the Director at any Annual Meeting unless the member intending to propose him has, at least five days before the meeting, left at the registered office of the Company a notice in writing, duly signed signifying the intention of such members to propose and the consent of the candidate to assume the office of the Director.
- 21.6.4. Notwithstanding anything contained in this clause 21.6, a non-executive Director shall not be a Director of the Company for a cumulative period of more than 10 years.
- 21.6.5. Subject to clause 21.6.2, the Company may by Ordinary Resolution in an Annual Meeting 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.
- 21.6.6. Notwithstanding anything to the contrary contained in clause 21.6.2, any person employed under a contract with the Company, which contract has a condition thereof that the person shall be a Director of the Board, that person shall not be subject to retirement by rotation as envisaged in clause 21.6.2, but the period for which that person shall be a Director and hold office as such shall be determined by the terms and conditions of his contract with the Company.

#### **21.7. Alternate Directors**

- 21.7.1. Subject to obtaining prior approval from the Central Bank, every Director may appoint any person (including any other Director) to act as an alternate Director in the Director's place, either generally or in respect of a specified meeting or meetings during the Director's absence or inability to act as a Director, provided the appointment of the alternate Director is approved by an Ordinary Resolution of Shareholders. Every Director may, at the Director's discretion, by notice in writing to the Company, remove that Director's alternate Director.
- 21.7.2. On any such appointment being made the alternate Director may, while acting in the place of

the Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson) of the Director appointing the alternate Director, and is subject in all respects to the same terms and provisions as that Director (except as regards remuneration, and the power to appoint an alternate Director under this Constitution). For the purpose of establishing a quorum of the Board an alternate Director is deemed to be the Director appointing him or her.

21.7.3. The notice of appointment of an alternate Director should include an address for service of notice of meetings of Directors. Failure to give an address will not invalidate the appointment but notice of meetings of the Board need not be given to the alternate Director until an address is provided to the Company.

#### **21.8. Shareholding qualification**

A Director is not required to hold Shares.

#### **21.9. Powers of the Board**

21.9.1. The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

21.9.2. The Board has, and may exercise, all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the Company, except to the extent that this Constitution, the Companies Act and / or the Banking Act expressly requires those powers to be exercised by the Shareholders or any other person.

21.9.3. In the exercise of its powers the Board shall report and be accountable to its Shareholders and the Central Bank, in accordance with (i) the Companies Act and the Banking Requirements and (ii) any other applicable legislative or regulatory requirement pertaining to the business and affairs of the Company.

#### **21.10. Delegation by the Board**

21.10.1. The Board may delegate to a committee of Directors, a Director, or an employee of the Company, or any other person, any one or more of its powers other than the following powers of the Board or such powers which are specifically reserved by the Companies Act or by this Constitution for Shareholders:

21.10.1.1. issue of shares;

21.10.1.2. Shareholder approval to the issue of shares;

21.10.1.3. consideration for the issue of shares;

- 21.10.1.4. distributions;
  - 21.10.1.5. issue of shares in lieu of dividends;
  - 21.10.1.6. Shareholder discounts;
  - 21.10.1.7. offers to acquire shares;
  - 21.10.1.8. redemption of shares at the option of a Company;
  - 21.10.1.9. provision of financial assistance;
  - 21.10.1.10. change of registered office;
  - 21.10.1.11. manner of approving an amalgamation proposal; and
  - 21.10.1.12. short form amalgamations.
- 21.10.2. The Board is responsible for the exercise by any delegate of a power delegated under this Constitution as if the power had been exercised by the Board, unless the Board:
- 21.10.2.1. believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the Directors by the Companies Act and this Constitution; and
  - 21.10.2.2. has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

#### **21.11. Directors to act in good faith**

- 21.11.1. A Director, when exercising powers or performing duties, shall act in good faith and in what the Director believes to be the best interests of the Company, and for the respective purposes for which the powers are explicitly or impliedly conferred.
- 21.11.2. If the Company shall become a wholly-owned Subsidiary a Director may, when exercising powers or performing duties as a Director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of the Company's holding Company even though it may not be in the best interests of the Company.
- 21.11.3. If the Company shall become a Subsidiary (but not a wholly-owned subsidiary) a Director may, when exercising powers or performing duties as a Director, with the prior agreement of the Shareholders (other than its holding Company), act in a manner which he or she believes is in the best interests of the Company's holding Company even though it may not be in the best interests of the Company.

## 22. MAJOR TRANSACTIONS

The Board may not procure or permit the Company to enter into a Major Transaction unless the transaction is:

- 22.1. approved by Special Resolution; or
- 22.2. contingent on approval by Special Resolution.

## 23. BORROWING POWERS

23.1. Subject to the provisions of this Constitution and the Banking Requirements, the Board may borrow or raise money from time to time as follows:

23.1.1. generally:

23.1.1.1. borrow money on credit;

23.1.1.2. issue, reissue, sell, pledge or hypothecate debt obligations of the Company; and

23.1.1.3. give a guarantee on behalf of the Company to secure performance of an obligation of the Company.

23.2. Subject to any laws governing the registration of mortgage bonds, notarial bonds, deeds of hypothecations, pledges and cessions; the Company may mortgage, hypothecate, pledge, cede or otherwise create a security interest in all or any property of the Company, owned or subsequently acquired, to secure any obligation of the Company.

23.3. Subject to the provisions of the Companies Act and the Banking Act, the Company may create and issue secured or unsecured debentures, which may be effected by means of a pledge, cession, mortgage bond, collateral mortgage bond, notarial bond, notarial surety bond, collateral notarial bond or any form of collateral security over incorporeal rights, movable and immovable property, issued in favour of one or more debenture-holders or to a trustee for debenture-holders, on the basis that:

23.3.1. any mortgage or notarial bond in pursuance of this clause shall be subject to the laws governing the registration of mortgage and notarial bonds, and be registered in the Deeds Registry;

23.3.2. debentures, debenture stock and other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued; and

23.3.3. any debentures, debenture stock, 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 or stock, attending and voting at General Meetings, appointment of Board or otherwise shall be given save with the sanction of the Shareholders by Special Resolution.

23.4. The Board shall cause the Company to keep a proper register at the office in accordance with the provisions of the Companies Act of all Charges affecting the property of the Company, giving in each case a short description of the property mortgaged or charged, and the names and addresses of the persons in whose favour any charge or pledge has been delivered, and the amount of Charge so created.

## **24. PROCEEDINGS OF BOARD**

### **24.1. Chairperson**

24.1.1. The Board may elect any one of the Independent Non – Executive Directors, as chairperson of the Board and determine the period for which the chairperson is to hold office.

24.1.2. The Director elected as chairperson holds that office until he or she dies or resigns or the Directors elect a chairperson in his or her place.

24.1.3. The chairperson of the Board shall not become a chairperson of any committee of the Board and shall not be a member of the audit committee of the Board.

24.1.4. If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

### **24.2. Notice of meeting**

24.2.1. A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause.

24.2.2. Not less than seven days' notice of a meeting of the Board shall be given to every Director who is in Botswana, and the notice shall include the date, time and place of the meeting and the agenda to be discussed. The agenda may be varied at any time prior to the meeting provided notice of amendment is given to all Directors and alternate Directors at least three business days prior to the meeting.

24.2.3. An irregularity in the notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

24.2.4. Notice of a meeting may be given by any means, including by telephone by electronic mail or by facsimile. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been received by the Director 7 days following the date the letter is posted.

### 24.3. **Meetings of Board**

A meeting of the Board may be held either:

24.3.1. by a number of Directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or

24.3.2. by means of audio, or audio and visual communication by which all the Directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

### 24.4. **Quorum**

24.4.1. A quorum for a meeting of the Board shall be a majority of the Directors.

24.4.2. No business may be transacted at a meeting of Directors if a quorum is not present.

### 24.5. **Voting**

24.5.1. Every Director has one vote.

24.5.2. In the case of equality of votes, the chairperson shall have a casting vote.

24.5.3. A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.

24.5.4. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against the resolution at the meeting.

### 24.6. **Minutes**

The Board shall ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.

### 24.7. **Written resolution**

24.7.1. A resolution in writing, sent to all Directors and signed or assented to by the majority of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution shall be deemed to have been passed on the date

on which it was signed by the Director last to sign.

24.7.2. Any such resolution may consist of several documents transmitted via e-mail, facsimile or other similar means of communication in like form each signed or assented to by one or more Directors. A written resolution which is signed by a Director and transmitted via electronic mail or facsimile shall be acceptable evidence that such resolution has been signed by the Director whose signature appears on the written resolution.

24.7.3. A copy of any such resolution shall be entered in the minute book of Board proceedings.

#### **24.8. Continuing Directors**

Notwithstanding any vacancy in the number of Directors, the Board will continue to comprise the continuing Directors, but, if their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors may act only for the purpose of increasing the number of Directors to the minimum number, or for summoning a general meeting of the Company.

#### **24.9. Other proceedings**

Subject to the provisions of this Constitution and the Companies Act, the Board may regulate its own procedure.

### **25. MANAGING DIRECTOR - APPOINTMENT**

The Board may from time to time appoint a Managing Director of the Company whose continued tenure shall be premised on satisfactory performance at the option of the Board.

### **26. DUTIES AND POWERS OF THE MANAGING DIRECTOR**

26.1. The Managing Director shall exercise such powers and authority as shall have been delegated by the Board in writing.

26.2. The Board may, from time to time, entrust and confer upon a Managing Director or any other executive officer for the time being such of the powers and authorities vested in them as it may deem fit, and may confer such powers and authorities from such time, and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as the Board may think expedient, and it may confer such powers and authorities either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers and authorities of the Board itself, and may from time to time revoke, withdraw or alter or vary all or any of such powers and authorities.

## 27. **TERMINATION OF EMPLOYMENT – EXECUTIVE DIRECTOR**

Executive Directors, including the Managing Director, will be employed in terms of a written service / employment contract, subject and to the same provisions as regards resignation, removal and disqualification as the other Directors. Termination of an Executive Director's service / employment contract, including the Managing Director, will result in immediate resignation from the Board.

## 28. **INTERESTED DIRECTORS**

### 28.1. **Notice of interest to be given**

28.1.1. A Director shall, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, if the Company has more than one Director, disclose to the Board of the Company:

28.1.1.1. if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or

28.1.1.2. if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.

28.1.2. For the purposes of this clause 28.1 a general notice entered in the interests register or disclosed to the Board to the effect that a Director is a shareholder, Director, officer or trustee of another named Company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that Company or person, is a sufficient disclosure of interest in relation to that transaction.

28.1.3. The Company is specifically required to keep an Interests Register for all Directors, as provided for in the Companies Act and all Directors shall be required to forthwith disclose all interests they have or may have in transactions with the Company, in accordance with this clause.

### 28.2. **No Right of interested Director to vote**

A Director may not vote on, or participate in any discussion in respect of, any transaction, contract or matter in which the Director is interested. Such Director will, however, be counted in the quorum present at the meeting.

## 29. **REMUNERATION, LOANS AND OTHER BENEFITS OF DIRECTORS**

29.1. The remuneration, benefits, service contracts and expenses of Directors shall be approved in terms of the Companies Act.

29.2. The Board shall not be entitled to approve payments at clause 29.1, which shall be reserved for Shareholders' approval.

### 30. **INDEMNITY AND INSURANCE FOR DIRECTORS**

Every Director shall be indemnified by the Company for any costs referred to in section 159 of the Companies Act. The Board may determine the amounts and terms and conditions of such an indemnity.

### 31. **COMPANY SECRETARY**

31.1. The Company shall appoint a Secretary or Secretaries who shall be resident in Botswana to perform the duties of a Secretary under the Companies Act. No person shall be appointed as a Secretary unless he holds the requisite qualifications prescribed under the Companies Act and is not disqualified inter alia, by reason of being an rehabilitated or undischarged insolvent or a sole Director or auditor of the Company.

31.2. The duties and role of the Secretary shall, inter alia, include:

31.2.1. 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;

31.2.2. 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;

31.2.3. being responsible for preparation and delivery of all the returns required to be filed with the registrar of companies 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 Companies Act;

31.2.4. issuing notices of Board and General Meetings and responding to all enquiries in relation to notices of meetings;

31.2.5. attending meetings of the Board and General Meetings 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;

31.2.6. being responsible to the Board for maintaining the register of Shareholders, debenture holders, Directors, secretaries, and charges;

31.2.7. together with the Board, ensuring that the Company keeps accounting records in accordance

with the Companies Act and the Constitution and that the financial statements are prepared and presented at the Annual Meeting; and

31.2.8. 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. **AUDITORS**

32.1. The Company shall at each annual general meeting appoint auditors to hold office until the next Annual Meeting.

32.2. 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 applicable laws.

32.3. Subject to the provisions of the applicable laws, 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.

## 33. **ACCOUNTING**

33.1. The Board 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:

33.1.1. all sums of money received and expended by the Company, and the matters in respect of which such receipts and expenditure take place;

33.1.2. all sale and purchases of property by the Company; and

33.1.3. the assets and liabilities of the Company.

33.2. 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 Board. The Board 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 Companies Act or by such resolution as aforesaid.

33.3. 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 Annual Meeting, together with a copy of the Directors' report and the auditors' report (if auditors have been appointed) shall, not less than ten clear working 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.

**34. PUBLIC OFFERING OF SECURITIES**

All public offerings of securities, as defined, in the Company, shall be given effect to strictly in accordance with the Companies Act.

**35. KING IV REPORT ON GOVERNANCE (“KING IV”)**

35.1. Although the underlying intention of King IV is not to force companies to comply with recommended practice, it provided a list of best practice principles to assist and guide Directors to make the right choices for the Company.

35.2. The Directors shall accordingly take cognisance of its principles in the exercise of their duties.

**36. AUTHENTICATION OF DOCUMENTS**

36.1. 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.

36.2. 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.

**37. MISCELLANEOUS**

**37.1. Language**

Board meetings and general meetings of the Shareholders and of any committee shall be conducted in English. Notices (including accompanying papers and minutes) of such meetings shall be prepared in English.

**37.2. Service**

Notice may be served by the Company upon any Director or Shareholder, either personally or by post or by fast post in a pre-paid envelope or package addressed to such Director or Shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile number of such Director or Shareholder or by written electronic mail (e-mail) to the last known electronic mail address or number of such Director or shareholder.

**37.3. Time of service by facsimile or electronic mail**

A notice served by facsimile or written electronic mail is deemed to have been served on the day following completion of its transmission.

**37.4. Time of service by post**

A notice sent by post or delivered to a document exchange is deemed to have been served:

37.4.1. in the case of a person whose last known address is in Botswana, within 7 days of date of mailing the envelope or package containing the same was posted or delivered in Botswana; and

37.4.2. in the case of a person whose last known address is outside Botswana, at the expiration of 7 days after the envelope or package containing the same was posted by fast post in Botswana.

**37.5. Proof of service**

In proving service by post or delivery to a document exchange, it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile or electronic mail, it is sufficient to prove that the document was properly addressed and sent by facsimile or electronic mail.

**37.6. Service on joint holders**

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

**37.7. Service of representatives**

A notice may be given by the Company to a person or persons entitled to such notice in consequence of the death or bankruptcy of a Shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address (if any) within Botswana supplied for the purpose by the person or persons claiming to be so entitled, or (until such time an address has been supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.



### **37.8. Execution of Deeds**

A contract or other enforceable obligation may be entered into by the Company as follows:

37.8.1. an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

37.8.1.1. two or more Directors; or

37.8.1.2. a Director, or any other person authorized by the Board whose signature must be witnessed; or

37.8.2. an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and

37.8.3. an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

### **37.9. Company may appoint attorneys**

37.9.1. The Company may, by an instrument in writing executed in accordance with clause 37.8, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters.

37.9.2. An act of an attorney in accordance with the instrument binds the Company.

### **37.10. Winding Up**

If the Company shall be wound up, whether voluntarily or otherwise, the liquidators may, with the sanction of a Special Resolution, divide among the contributors in specie any part of the assets of the Company, and may, with the like sanction, vest any part of the assets of the Company in trustees upon such trusts for the benefit of the contributories as the liquidators, with the like sanction, shall think fit, and if thought expedient, any such division may be otherwise than in accordance with the legal rights of the Shareholders of the Company, and in particular any class may be given preferential or special rights or may be excluded altogether or in part, but in case any division otherwise than in accordance with the legal rights of the contributories shall be determined on, any contributory who

would be prejudiced thereby shall have a right to dissent, and ancillary rights as if such determination were a special resolution passed pursuant to the Companies Act.

**38. REMOVAL FROM THE REGISTER**

In the event that:

38.1. the Company has ceased to carry on business, has discharged in full its liabilities to all known creditors and has distributed its surplus assets in accordance with this Constitution and the Companies Act; or

38.2. the Company has no surplus assets after paying its debts in full or in part and no creditor has applied to the Court under section 241 of the Companies Act for an order putting the Company into liquidation;

the Board of Directors may, in the prescribed form, request the registrar of companies to remove the Company from the register.

**THUS SIGNED AND ADOPTED AT GABORONE ON THIS \_\_\_\_\_ DAY OF JULY 2024**

**CERTIFIED BY**

\_\_\_\_\_  
**CHAIRMAN**

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