

THE COMPANIES ACT (CHAPTER 50)

A COMPANY LIMITED BY GUARANTEE

CONSTITUTION OF **INSTITUTE OF TRUSTSERVICE PROVIDERS BOTSWANA**

1. The name of the company is **INSTITUTE OF TRUST SERVICE PROVIDERS BOTSWANA**
2. The registered office of the company is situated in the Republic of Botswana.

PLOT 14456, KAMUSHANGA ROAD, GABORONE.

3. The liability of the members is limited.
4. Each member of the company undertakes to contribute to the assets of the company in the event of it being wound up while he or she is a member, or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributors among themselves, such amount as may be required not exceeding **P1 500.00**.
5. The **activities** of the company are to enforce the Trust Property Control Act of 2022 which introduces the registration of Trust Service Providers, as such the company will serve as the registration and compliance regulatory body of Trustees in Botswana.
6. Members, who are Trust Service Providers in Botswana, are persons, other than a person or business listed under schedule 1 of the Financial Intelligence Act, that as part of his or her business, provides any of the following services to a Third Party;
 - (a) Acting as Formation agent for trusts
 - (b) Providing a registered office, business address or accommodation, correspondence or administrative address for a trust, or
 - (c) Acting as, or arranging for another person to act as a trustee of an express trust.

Date :21st/09/2023

Interpretation

7.—(1) In this Constitution —

“Act” means the Companies Act ;

“board of directors” means the board of directors of the company;

“directors” means the directors of the company;

“general meeting” means a general meeting of the company;

“member” means a member of the company;

“seal” means the common seal of the company;

“secretary” means a secretary of the company appointed under the Act.

(2) In this Constitution —

(a) expressions referring to writing include, unless the contrary intention appears, references to printing, lithography, photography and other modes of representing or reproducing words in a visible form; and

(b) words or expressions contained in this Constitution must be interpreted in accordance with the provisions of the Act in force as at the date at which this Constitution becomes binding on the company.

Membership

8.—(1) A member may withdraw from membership of the company by giving 7 days’ notice to the company in writing.

(2) Membership is not transferable.

(3) A person’s membership terminates when that person dies or ceases to exist.

General meeting

9.—(1) An annual general meeting of the company must be held in accordance with the provisions of the Act.

(2) All general meetings other than the annual general meetings are called extraordinary general meetings.

10.—(1) An extraordinary general meeting may be requisitioned by —

(a) any director, whenever the director thinks fit; or

(b) any requisitionist as provided for by the Act.

(2) Upon a requisition being made under paragraph (1), an extraordinary general meeting must be convened.

11.—(1) Subject to the provisions of the Act relating to special resolutions and any agreement amongst persons who are entitled to receive notices of general meetings from a company, at least 14 days’ notice (exclusive of the day on which the notice is served or treated to be served, but inclusive of the day for which notice is given) of any general meeting must be given to persons entitled to receive notices of general meetings from the company.

(2) A notice of a general meeting must specify the following:

(a) the place at which the general meeting is held;

(b) the date and time of the general meeting;

(c) in case of special business to be transacted at the general meeting, the general nature of that business.

12.—(1) All business that is transacted at an extraordinary general meeting is special business.

(2) All business that is transacted at an annual general meeting is special business, except —

- (a) the consideration of the financial statements, the reports of the auditors and the statements of the directors;
- (b) the election of directors in the place of retiring directors; and
- (c) the appointment and fixing of the remuneration of the auditors.

Proceedings at general meetings

13.—(1) No business is to be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Except as otherwise provided in this Constitution, 2 members present in person form a quorum.

(3) In this regulation, “member” includes a person attending as a proxy or as representing a corporation or a limited liability partnership which is a member.

14. If within half an hour from the time appointed for a general meeting a quorum is not present, the meeting —

- (a) in the case where the meeting is convened upon the requisition of members, is dissolved; or
- (b) in any other case, is adjourned to the same day in the next week at the same time and place, or to another day and at another time and place as the directors may determine.

15. The chairman of a general meeting is —

- (a) in the case where the board of directors has appointed a chairman amongst the directors, the chairman; or
- (b) in the case where —
 - (i) the chairman of the board of directors is unwilling to act as the chairman of the general meeting;
 - (ii) the chairman is not present within 15 minutes after the time appointed for the holding of the general meeting; or
 - (iii) the board of directors has not appointed a chairman amongst the directors,the member elected by the members present for the purpose of being the chairman of the general meeting.

16.—(1) The chairman may, with the consent of a general meeting at which a quorum is present, and must if so directed by a general meeting, adjourn the general meeting from time to time and from place to place.

(2) No business is to be transacted at any adjourned meeting other than the business left unfinished at the general meeting from which the adjournment took place (called in this regulation the original general meeting).

(3) There is no need to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting unless the adjourned meeting is to be held more than 30 days after the date of the original general meeting.

17.—(1) At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded —

- (a) by the chairman;
- (b) by at least 3 members present in person or by proxy; or

(c) by any member or members present in person or by proxy and representing not less than 5% of the total voting rights of all the members having the right to vote at the meeting.

(2) Unless a poll is demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) The demand for a poll may be withdrawn.

18.—(1) Subject to paragraph (2), if a poll is demanded it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs.

(2) A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

(3) The result of the poll is a resolution of the meeting at which the poll was demanded.

19. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

20.—(1) Subject to any rights or restrictions conferred by this Constitution, at meetings of members or classes of members, each member entitled to vote may vote in person or by proxy or by attorney.

(2) On a show of hands, every member or representative of a member present in person has one vote.

(3) On a poll, every member present in person or by proxy or by attorney or other duly authorised representative has one vote.

21. A member who is mentally disordered or whose person or estate is liable to be dealt with in any way under the law relating to mental capacity may vote, whether on a show of hands or on a poll, by a person who properly has the management of the estate of the member, and any such person may vote by proxy or attorney.

22.—(1) No objection may be raised as to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.

(2) Any objection made in due time must be referred to the chairman of the meeting, whose decision is final and conclusive.

(3) Every vote not disallowed at the meeting is valid for all purposes.

23.—(1) The instrument appointing a proxy must be in writing, in the common or usual form and —

(a) where the appointer is a corporation or a limited liability partnership, either under seal or under the hand of an officer or attorney duly authorised; or

(b) in any other case, under the hand of the appointer or of the attorney of the appointer duly authorised in writing.

(2) A proxy may but need not be a member of the company.

(3) The instrument appointing a proxy is treated as conferring authority to demand or join in demanding a poll.

24. Where an opportunity of voting for or against a resolution is to be conferred on members, the instrument appointing a proxy may be in the following form or such other form as the board of directors may approve:

“I/We*, [name(s)], of [address(es)], being a member/members* of the Institute of Trustservice Providers Botswana, appoint [name], of [address], or failing him/her*, [name] of [address], as my/our* proxy to vote for me/us* on my/our* behalf at the [annual or extraordinary, as the case may be] general meeting of the company, to be held on [date], and at any adjournment of the meeting.

Signed on [date].

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

25.—(1) The following documents must be deposited at the registered office of the company, or at such other place in Botswana as is specified in the notice convening the meeting by the time specified in paragraph (2) for the purpose of appointing a proxy:

- (a) the instrument appointing a proxy;
- (b) the power of attorney or other authority, if any, under which the instrument appointing the proxy is signed, or a notarially certified copy of that power of attorney or authority.

(2) For the purposes of paragraph (1), the time is —

- (a) in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; or
- (b) in any other case, not less than 72 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

(3) An instrument of proxy is not valid if paragraph (1) is not complied with.

26.—(1) Subject to paragraph (2), a vote given in accordance with the terms of an instrument of proxy or attorney is valid despite —

- (a) the previous death or mental disorder of the principal; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed.

(2) Paragraph (1) does not apply if an intimation in writing of such death, mental disorder, revocation, or transfer has been received by the company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

Directors: Appointment, etc.

27.—(1) At the first annual general meeting of the company, all the directors must retire from office.

(2) At every annual general meeting subsequent to the first annual general meeting of the company, one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, must retire from office.

28. A retiring director is eligible for re-election.

29. The directors to retire in every year must be those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire must (unless they otherwise agree among themselves) be determined by lot.

30.—(1) The company at the meeting at which a director retires may fill the vacated office by electing a person to fill the vacated office.

(2) If the company does not fill the vacated office, the retiring director is, if he or she offers himself or herself for re-election and is not disqualified under the Act from holding office as a director, treated as re-elected, unless —

- (a) at that meeting it is expressly resolved not to fill the vacated office; or
- (b) a resolution for the re-election of that director is put to that meeting and lost.

31. The company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

32.—(1) The directors have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but the total number of directors must not at any time exceed the number fixed in accordance with this Constitution.

(2) Any director appointed under paragraph (1) holds office only until the next annual general meeting, and is then eligible for re-election.

(3) Any director appointed under paragraph (1) must not be taken into account in determining the directors who are to retire by rotation at the next annual general meeting.

33.—(1) The company may by ordinary resolution remove any director before the expiration of his or her period of office, and may by an ordinary resolution appoint another person in place of the removed director.

(2) The person appointed in place of the removed director is subject to retirement at the same time as if the person had become a director on the day on which the director in whose place the person is appointed was last elected a director.

34.—(1) The remuneration of the directors is, from time to time, to be determined by the company in general meeting.

(2) The remuneration of the directors is treated as accruing from day to day.

(3) The directors may also be paid all travelling, hotel, and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company.

35. The office of director becomes vacant if the director —

- (a) ceases to be a director by virtue of the Act;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) becomes prohibited from being a director by reason of any order made under the Act;

- (d) becomes mentally disordered and incapable of managing himself or herself or his or her affairs or a person whose person or estate is liable to be dealt with in any way under the law relating to mental capacity;
- (e) resigns his or her office by notice in writing to the company;
- (f) for more than 6 months is absent without permission of the directors from meetings of the directors held during that period;
- (g) without the consent of the company in general meeting, holds any other office of profit under the company except that of managing director or manager; or
- (h) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his or her interest in manner required by the Act.

Powers and duties of directors

36.—(1) The business of a company is managed by or under the direction or supervision of the directors.

(2) The directors may exercise all the powers of a company except any power that the Act or this Constitution requires the company to exercise in general meeting.

37. Without limiting the generality of regulation 36, the directors may exercise all the powers of the company to do all or any of the following for any debt, liability, or obligation of the company or of any third party:

- (a) borrow money;
- (b) mortgage or charge its undertaking, property, and uncalled capital, or any part of the undertaking, property and uncalled capital;
- (c) issue debentures and other securities whether outright or as security.

38. The directors may exercise all the powers of the company in relation to any official seal for use outside Botswana and in relation to any branch register of debenture holders kept in any place outside Botswana.

39.—(1) The directors may from time to time by power of attorney appoint any corporation, firm, limited liability partnership or person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for the purposes and with the powers, authorities, and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for a period and subject to any conditions as the directors may think fit.

(2) Any powers of attorney granted under paragraph (1) may contain provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities, and discretions vested in the attorney.

40. All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, and all receipts for money paid to the company, must be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by any 2 directors or in such other manner as the directors from time to time determine.

41.—(1) The directors must cause minutes to be made of all of the following matters:

- (a) all appointments of officers to be engaged in the management of the company's affairs;
- (b) names of directors present at all meetings of the company and of the directors;
- (c) all proceedings at all meetings of the company and of the directors.

(2) The minutes referred to in paragraph (1) must be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

Proceedings of directors

42.—(1) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

(2) A director may at any time summon a meeting of the directors.

(3) The secretary must, on the requisition of a director, summon a meeting of the directors.

43.—(1) Subject to this Constitution, questions arising at any meeting of directors must be decided by a majority of votes and a determination by a majority of directors is for all purposes treated as a determination of the directors.

(2) In case of an equality of votes the chairman of the meeting has a second or casting vote.

44.—(1) A director must not vote in respect of any transaction or proposed transaction with the company in which the director is interested, or in respect of any matter arising from such transaction or proposed transaction.

(2) If a director referred to in paragraph (1) does vote in respect of any transaction or proposed transaction referred to in that paragraph, the director's vote must not be counted.

45. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed is 2.

46.—(1) Subject to paragraph (2), the directors may act despite any vacancy in their body.

(2) If and so long as the number of directors is reduced below the number fixed by this Constitution as the necessary quorum of directors, the continuing directors or director may not act except for the purpose of increasing the number of directors to that number or for the purpose of summoning a general meeting of the company.

47.—(1) The directors may elect a chairman of their meetings and determine the period for which the chairman is to hold office.

(2) If no chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

48.—(1) The directors may delegate any of their powers to committees consisting of any member or members of their body as the directors think fit.

(2) Any committee formed under paragraph (1) must in the exercise of the delegated powers conform to any regulation that may be imposed on it by the directors.

49.—(1) A committee may elect a chairman of its meetings.

(2) If no chairman is elected, or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

50.—(1) A committee may meet and adjourn as it thinks proper.

(2) Questions arising at any meeting must be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman has a second or casting vote.

51. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director is as valid as if every such person had been duly appointed and was qualified to be a director, even if it is afterwards discovered that —

- (a) there was some defect in the appointment of any director or person acting as a director; or
- (b) the directors or person acting as a director or any of them were disqualified.

52.—(1) A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, is as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.

(2) Any resolution in writing under paragraph (1) may consist of several documents in like form, each signed by one or more directors.

53. Where the company has only one director, the director may pass a resolution by recording it and signing the record.

Managing directors

54.—(1) The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.

(2) A director appointed under paragraph (1) is not, while holding the office of managing director, subject to retirement by rotation or to be taken into account in determining the rotation of retirement of directors, but his or her appointment automatically determines if he or she ceases from any cause to be a director.

55. A managing director may, subject to the terms of any agreement entered into in any particular case, receive remuneration by one or more of the following ways as the directors may determine:

- (a) salary;
- (b) commission.

56. The directors may entrust to and confer upon a managing director any of the powers exercisable by them 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 from time to time revoke, withdraw, alter, or vary all or any of those powers.

Alternate directors and substitute directors

57.—(1) Any director (called in this regulation the appointer) may, with the approval of the board of directors, appoint any person, whether a member of the company or not, to be an alternate or substitute director in the appointer's place for any period as the appointer thinks fit.

(2) Any person holding office as an alternate or substitute director is entitled to notice of meetings of the directors and to attend and vote at meetings of the directors, and to exercise all the powers of the appointer in the appointer's place.

(3) An alternate or substitute director must vacate office if the appointer vacates office as a director or removes the appointee from office.

(4) Any appointment or removal under this regulation must be effected by notice in writing under the hand of the director making the appointment or removal.

Associate directors

58.—(1) The directors may from time to time appoint any person to be an associate director and may from time to time cancel any such appointment.

(2) The directors may fix, determine and vary the powers, duties and remuneration of any person appointed as an associate director.

(3) A person appointed as an associate director does not have any right to attend or vote at any meeting of directors except by the invitation and with the consent of the directors.

Secretary

59.—(1) The secretary must be appointed by the directors in accordance with the Act for any term, at any remuneration, and upon any conditions as the directors think fit.

(2) Any secretary appointed under paragraph (1) may be removed by the directors.

Seal

60.—(1) The directors must provide for the safe custody of the seal.

(2) The seal must only be used by the authority of the directors or of a committee of the directors authorised by the directors to use the seal.

(3) Every instrument to which the seal is affixed must be signed by a director and must be countersigned by the secretary or by a second director or by another person appointed by the directors for the purpose of countersigning the instrument to which the seal is affixed.

Financial statements

61.—(1) The directors must —

- (a) cause proper accounting and other records to be kept;
- (b) distribute copies of financial statements and other documents as required by the Act; and
- (c) determine whether, to what extent, at what times and places, and under what conditions or regulations the accounting and other records of the company are open to the inspection of members who are not directors.

(2) No member (who is not a director) has any right of inspecting any account or book or paper of the company except as conferred by statute or authorised by the directors or by the company in general meeting.

Notices

62.—(1) A notice may be given by the company to any member either personally or by sending it by post to the member —

- (a) at the member's registered address; or
- (b) if the member has no registered address in Botswana, to the address, if any, in Botswana supplied by the member to the company for the giving of notices to the member.

(2) Where a notice is sent by post, service of the notice is treated as effected by properly addressing, prepaying, and posting a letter containing the notice.

(3) Where a notice is sent by post, service of the notice is treated as effected —

- (a) in the case of a notice of a meeting, on the day after the date of its posting; and
- (b) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

63.—(1) A notice may also be sent or supplied by the company by electronic means to a member who has agreed generally or specifically that the notice may be given by electronic means and who has not revoked that agreement.

(2) Where the notice is given by electronic means, service of the notice is treated as effected properly by sending or supplying it to an address specified for the purpose by the member generally or specifically.

64.—(1) Notice of every general meeting must be given in any manner authorised in regulations 62 and 63 to

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- (a) every member; and
 - (b) the auditor for the time being of the company.

(2) No other person is entitled to receive notices of general meetings.

Indemnity

65. Every officer of the company is to be indemnified out of the assets of the company against any liability incurred by the officer to a person other than the company attaching to the officer in connection with any negligence, default, breach of duty or breach of trust.

66. Every auditor is to be indemnified out of the assets of the company against any liability incurred by the auditor in defending any proceedings, whether civil or criminal, in which judgment is given in the auditor's favour or in which the auditor is acquitted or in connection with any application under the Act in which relief is granted to the auditor by the Court in respect of any negligence, default, breach of duty or breach of trust.

Income and property of company

67.—(1) The income and property of the company must be applied solely towards the promotion of the objects of the company and no portion of the income and property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the company.

(2) Despite paragraph (1) or any other provision of this Constitution, the company may make payment, in good faith, of —

(a) reasonable and proper remuneration to an officer, member or employee of the company for services rendered to the company;

(b) reimbursement to a director of the company for out-of-pocket expenses; or

(c) payment, in good faith, of a reasonable and proper rent to a director or member of the company for premises demised to or let to the company.

(3) The company shall generate income from

(a) membership subscriptions;

(b) sales proceeds from events and activities;

(c) training and continuous and professional development of members;

(d) sponsorships and donations;

(e) a range of insurance products aimed at professionalizing and protecting our members;

(f) various stakeholder engagement projects.

Dissolution of company

68.—(1) The company may be dissolved upon the passing of a special resolution of the company at a general meeting of members convened for this purpose and the obtaining of written approval by a majority of the board of directors after such special resolution has been passed.

(2) If upon the winding up or dissolution of the company there remains, after the satisfaction of all its debts and liabilities, any moneys or property whatsoever, the same must not be paid to or distributed among the members of the company, but must be given or transferred to a charity or institution of a public character, as determined by the members of the company at or before the time of the dissolution having objects similar to those of the company, and which is registered under the laws of the Republic of Botswana.