



**Botswana Stock Exchange**

**Listings Requirements**

(Approved by Non-Bank Financial Institutions Regulatory Authority)

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## DEFINITIONS

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Throughout these listings requirements, unless otherwise stated or the context requires otherwise, the following terms will have the meanings set out below:

<b>Term</b>	<b>Meaning</b>
the Act	the Botswana Companies Act 2003 (No.32 of 2004) as amended, or any law which may replace it in part or wholly
acting in concert	co-operating for a common purpose by two or more persons pursuant to an agreement, arrangement or understanding (whether formal or informal) between them; and associates shall be deemed to be so co-operating
admission or admitted to listing	admission of securities to listing on the BSE and "admitted" shall be construed accordingly
affected transaction	any transaction (including a transaction which forms part of a series of transactions) or scheme, whatever form it may take, which: <ol style="list-style-type: none"><li>1 taking into account any securities held before such transaction or scheme, has or will have the effect of vesting control of any company in any person, or two or more persons acting in concert, in whom control did not vest prior to such transaction or scheme; or any person, or two or more persons acting in concert, acquiring or becoming the sole holder or holders of, all the securities, or all the securities of a particular class, of any company; or</li><li>2 involves the acquisition by any person, or two or more persons acting in concert, in whom control of any company vests, of further securities of that company in excess of the limits prescribed;</li></ol>
applicant	an issuer which is proposing to apply, or is applying, for a listing on the BSE or an entity which is proposing to apply, or is applying to be registered as an adviser to BSE listed companies.
associate	<p><b>in relation to an individual:</b></p> <ol style="list-style-type: none"><li>1 that individual's spouse, children and dependents; and/or</li><li>2 the trustees, acting as such, of any trust in which the individual's spouse and children and dependents are beneficiaries (other than a trust which is either an occupational pension scheme, or an employees' share scheme which does not, in either case, have the effect of conferring benefits on the individual or the individual's spouse and children );</li><li>3 the trustees of any trust in which the individual and/or his family individually or taken together have the ability to control 35% of the votes of the trustees or appoint 35% the trustees, or to appoint or change 35% of the beneficiaries of the trust.</li></ol>

- 4 any company in whose equity securities the individual or any person or trust contemplated in 1, 2 or 3 above (taken together) are directly or indirectly beneficially interested and would be able to:
- (a) exercise or control the exercise of 35% or more of the votes able to be cast at general meetings on all, or substantially all matters; or
  - (b) to appoint or remove directors holding 35% or more of the voting rights at board meetings on all, or all substantially all, matters; or
  - (c) to exercise or control the exercise of 35% or more of the votes able to be cast at a board meeting on all or substantially all, matter.

**in relation to a company:**

Has the same meaning as given in IFRS

audited financial statements

refers to a full set of financial statements (including all primary statements, notes and explanations), prepared in accordance with IFRS, approved by the Board of Directors, over which the appointed external auditor has issued an audit opinion in accordance with the requirements of International Standards for Auditors (ISA).

beneficial

"beneficial" in relation to:

- 1 any interest in a security, means the de facto right or entitlement to receive the income payable in respect of that security and/or to exercise or cause to be exercised any or all of the voting, conversion, redemption or other rights attaching to that security; and
- 2 any other interest, means the obtaining of any benefit or advantage, whether in money, in kind, or otherwise, as a result of the holding of that interest

BSE

The Botswana Stock Exchange

BSEA

The Botswana Stock Exchange Act, 1994, including any amendments thereto and any successor thereof

capitalisation issue (or bonus issue)

an issue of fully paid shares capitalised from a company's share premium, capital redemption reserve fund or reserves (or combination thereof) to existing shareholders of the company in proportion to their shareholdings at a specific date

cash company or cash shell

a listed company whose assets, to the satisfaction of the BSE consist wholly or mostly of cash because it has disposed of all or a substantial part of its business or otherwise ceased to have a business of sufficient substance to support its market capitalisation

circular

any document or advertisement issued to holders of listed securities by an issuer of securities, but excluding listing particulars, annual reports and accounts, interim reports, proxy forms and dividend vouchers

closed period

(a) the date from the financial year end up to the date of earliest publication of one of the following:

	(i) Preliminary financial statements;
	(ii) Audited financial statements; or
	(b) the date from the end of each half year up to the date of the publication of the half yearly financial statements.
	(c) any period when an issuer is trading under a cautionary announcement.
	(d) any period when an issuer is dealing with a potentially price sensitive matter known to insiders only even if issuer is not trading under a cautionary announcement.
the Committee	the Committee of the BSE. This term is interchangeable with the Listings & Trading sub-Committee or Listings Executive Committee, as the Listings & Trading sub-Committee has authorised the Listings Executive Committee chaired by the CEO, to act on its behalf in all instances.
company	a body corporate (wherever incorporated or established) and includes any other legal person, any undertaking and any association of persons or of entities and any trust or similar device (wherever established) which issues securities which are capable of being listed by the BSE
controlling shareholder	any shareholder, who together with: <ol style="list-style-type: none"> <li>1 his, or its, associates; and</li> <li>2 any other party with whom such shareholder has an agreement or arrangement or understanding (whether formal or informal) relating to any voting rights attaching to securities of the relevant company; can exercise, or cause to be exercised, 50% or more of the voting rights at meetings of the relevant company, or can appoint or remove, or cause to be appointed or removed, directors exercising more than 50% of the voting rights at directors' meetings of the relevant company</li> </ol>
convertible securities	securities which are convertible into or exchangeable for other securities accompanied by options to subscribe for or purchase other securities and "conversion" and "convertible" shall be construed accordingly
CSDB	Central Securities Depository Company of Botswana
dependent	A person whose support and maintenance is contingent upon the financial aid of another
director	any person occupying the position of director or alternate director of a company, by whatever name he or she may be designated and, in relation to an issuer which is not a company, a person with corresponding powers and duties
Disclosure Document	refers to a pre-listing statement or a prospectus. The Document is required to be issued by companies in terms of the Listings Requirements.
equity shares	shares comprised in a company's equity share capital and which carry voting rights
equity share capital	in regard to a company, its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects

	capital, carries any right to participate beyond the specified amount in a distribution
equity securities	equity shares and securities convertible into equity shares
external company	a company incorporated outside the Republic of Botswana
external property	property situated outside the Republic of Botswana
false market	the creation through any means of a fictitious price of a security
greenshoe option	provision in an agreement allowing the issuance of additional shares in the event of strong investor demand typically in respect of underwriters or market makers
group	In the context of companies, has the same meaning as per the definition given in IFRS
holding company	a company that has one or more subsidiaries
Independent	in relation to registered advisers shall mean a registered adviser who; <ul style="list-style-type: none"> <li>a) is not a representative of a shareholder who has the ability to significantly influence management of the listed company in question;</li> <li>b) has not been employed by the listed company or its subsidiaries in any executive capacity for the preceding three financial years;</li> <li>c) is not a member of the immediate family of an individual who is or has been in the past three years employed by the listed company or its group as an executive;</li> <li>d) is not a significant customer of or supplier to the listed company and its group;</li> <li>e) has no significant contractual relationship with the listed company and its group;</li> <li>f) is free from any business either related to the listed company or its group save for offering the professional services in question; and</li> <li>g) is free from any other business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner</li> </ul>
individual's family	the individual's spouse, children and dependents
Inside Information	Has the same meaning as given in the Securities Bill
Insider	Has the same meaning as given in the Securities Bill
International Financial Reporting Standards or IFRS	the International Financial Reporting Standards formulated by the International Accounting Standards Board or, in the case of an external company, internationally generally accepted accounting practice acceptable to the BSE.
International Standards on Auditing or ISA	the International Standards on Auditing formulated by the International Auditing and Assurance Standards Board
an introduction	a method of bringing securities to listing not involving an issue of new securities or any marketing of existing securities because the spread of shareholders already complies with the conditions for listing
intangible assets	non-monetary assets without physical substance including but not limited to goodwill, patents, trademarks, brand names, copyrights, franchises, licences, know-how and publication titles

issuer	any company, any class of whose securities has been admitted or is, or is proposed to be, the subject of an application for admission
Key persons	directors and senior management of the issuer. In respect of Exchange Traded Funds, this will include, the trustees and the directors and senior management of the management company
listed company	a company, any class of whose securities is listed
the List	the list maintained by the BSE of companies whose securities it has admitted to listing
listing	the admission of a security to the List and "listed" shall be construed accordingly
Listings and Trading sub-Committee	the BSE Listings and Trading sub-Committee is a sub-committee of the BSE. This term is interchangeable with the Committee as the Committee has authorised it to act on its behalf in all instances.
listing particulars	a statement by a company seeking a listing and issued for the purpose of giving information to the public with regard to the company and containing particulars specified in the listings requirements, by the law, or both
Listings Requirements	the listings requirements as from time to time amended by the BSE contained herein (including the "introduction"), save that the section headings, paragraph headings and the introductory text to each section headed "Scope of Section" do not form part of the listings requirements, and are for guidance and ease of reference only and are not to be construed as affecting the substance or interpretation of the listings requirements
Main Board	all securities listed on the main board of the list
Market maker	means an entity that quotes bid and offer prices continuously for specific securities that it holds in inventory and is prepared and able to buy or sell those securities at any time on its own account
market value	in relation to a listed security, the ruling price for that security
Mergers and Acquisitions Rules	Until the Botswana Mergers and Acquisitions Code is in place, the Mergers and Acquisitions Rules refer to the South African Mergers and Acquisitions Regulations of 2011
Ordinary Resolution	the resolution shall require more than 50% of votes cast in favour by the shareholders present or represented by proxy at the general meeting; and
Ordinary Resolutions	in respect of related party transactions: The resolution shall require at least 50% of votes cast in favour of the resolution by shareholders excluding the related party.
offer for sale	an invitation to the public by, or on behalf of, a third party to purchase securities of the issuer already in issue and may be in the form of an invitation to tender at or above a stated price
offer for subscription	an invitation to the public by, or on behalf of, an issuer to subscribe for securities of the issuer not yet in issue or allotted, and may be in the form of an invitation to tender at or above a stated price

placing	a marketing of securities already in issue but not listed, or not yet in issue, to specified persons or to clients of the sponsoring broker or any securities house assisting in the placing, which does not involve an offer to the public or to existing holders of the applicant's securities generally and which takes place immediately before the applicant is listed
price sensitive information	Unpublished information which can reasonably be expected to, if it were made public, have an effect on the ruling price of a listed company's securities. May also be used interchangeably with "Inside Information"
price stabilization	a process of injecting or mopping up securities from the market to enhance price discovery through the utilization of a green-shoe option
prospectus	the prospectus issued in accordance with the Act
public shareholder	<p>For the purposes of these Requirements, securities of a listed company will not be regarded as being held by a public shareholder if they are beneficially held, whether directly or indirectly by;</p> <ul style="list-style-type: none"> <li>a) its parent or associate companies or any subsidiaries or associates of its parent company; and,</li> <li>b) its directors who are holding office as directors of the company, their spouses, children and dependents; and,</li> <li>c) Key Management Personnel and their spouses, children and dependents; and,</li> <li>d) any single shareholder who holds 10% or more of the shares.</li> <li>e) any party acting in concert with the parties set out in (a) to (d) above;</li> <li>f) any entity holding 10% or more of the shares of a listed company except where such shareholder is; <ul style="list-style-type: none"> <li>(i) A Pension fund regulated by NBFIRA;</li> <li>(ii) an entity established under the Collective Investments Undertakings Act or any other listed investment fund regulated by the NBFIRA; or</li> <li>(iii) a registered holder of securities which are the subject of an Exchange Traded Fund or a depository receipt programme listed on the Botswana Stock Exchange. e</li> </ul> </li> </ul> <p>The exemptions above will only be valid provided such entities do not act in concert with any other party.</p>

**Recognized Exchange**

Any stock exchange which is a member of the World Federation of Exchanges

**renounceable offer** an invitation by a listed company to its shareholders to subscribe by way of rights for securities in the applicant where the listed company has received the right to subscribe for those securities in the applicant but renounces all or part of that right to its shareholders

**The Republic of Botswana** the Republic of Botswana constituted under the Constitution of Botswana



rights offer	an offer to existing holders of securities to subscribe for or purchase further securities in proportion to their holdings made by means of the issue of a renounceable letter or other negotiable documents which may be traded (as either "fully paid" or "nil paid" rights) for a period before payment for the securities is due
the Rules of the BSE	the rules made by the BSE from time to time
the ruling price	the price at which the last sale of a security took place, or, if higher the closing bid price, or, if lower, the closing offer price as published in the daily official list on the relevant day
scrip dividend	for the purposes of these listings requirements: bonus (or capitalisation) shares which a shareholder elects to receive in lieu of a cash dividend where the shareholder is given a right to make such an election
secretary	includes any official of a company, by whatever name he may be designated, including a company, who, or which, is performing the duties normally performed by a secretary of a company
security(ies)	(a) means any fully paid up share, stock, loan stock, unit or a unit portfolio or other security, other than a bearer security or proprietary right; and (b) includes any right of option to acquire a security referred to in paragraph (a), whether fully paid up or not (c) securities as per paragraph (a) and (b) does not include: 1 shares in a private company; or 2 stocks or shares in a public company which cannot be acquired or transferred without the consent or approval of the directors or any representatives of the company, other than such consent or approval required by, under or by virtue of any law, or any options on or rights to such stocks and shares
significant	where used in the context of financial performance and/or a financial position of the issuer, it shall mean a change of plus or minus 10%; where used in the context of contracts, it shall mean a contract that contributes 10% or more to the revenue or expenditure of the issuer;
Special Resolution	If the listed company has 30% or more of its securities held by public shareholders, the resolution shall require more than 75% of votes cast in favour by the shareholders present or represented by proxy at the general meeting; and  if the listed company has less than 30% of its securities held by public shareholders, the resolution shall require more than 90% of votes cast in favour by the shareholders present or represented by proxy at the general meeting.
Special Resolutions in respect of related party transactions	The resolution shall require at least 75% of votes cast in favour of the resolution by shareholders excluding the related party
Stabilizing agent	the institution appointed by the issuer to carry out the process of price stabilization

the State	the government of the Republic of Botswana
subscribed capital	the portion of the capital of a company which has been subscribed for by shareholders
subsidiary	a subsidiary company as defined in the Companies Act
weighted average traded price	the total value of the securities traded divided by the total number of securities traded over a particular period of time

## CHAPTER 1- Introduction

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### 1.1 Objectives

It is an integral function of the BSE to provide facilities for the listing of securities (including securities issued by companies, domestic or foreign), to provide the BSE's users with an orderly market place for trading in such securities and to regulate the market accordingly.

### 1.2 General Powers of the Committee

- (a) Under the provisions of the BSEA a company which desires to have its securities dealt with on a stock exchange must apply for a listing on the BSE. Such application must comply with the Listings Requirements of the Exchange. The Committee is the competent authority responsible for:
  - (i) the list of the securities which may be dealt in on the BSE;
  - (ii) applications by the issuers of securities for the inclusion of securities on the BSE Official list; and
  - (iii) the annual revision of the list.
  
- (b) Subject to the provisions of the BSEA the Committee has the power:
  - (i) to prescribe from time to time the minimum listings requirements with which an applicant shall comply before each security issued by such applicant is granted a listing;
  - (ii) to prescribe from time to time the minimum listings requirements with which a listed company shall comply while a security issued by it remains listed;
  - (iii) subject to the listings requirements, to grant, review and suspend or terminate a listing of securities;
  - (iv) to suspend, alter or rescind a listings requirement prescribed before or after a listing has been granted and to prescribe additional listings requirements from time to time by way of amendment to these listing requirements
  - (v) to prescribe the circumstances under which a listing of a security shall or may be suspended or terminated.
  - (vi) to prescribe the standards of conduct, disclosure and corporate governance that issuers and their officers (including directors) and agents shall meet;
  - (vii) to prescribe such fines, penalties and/or other remedies for any contravention of or failure to comply with the Listing Requirements;
  
- (c) Nothing contained in this section shall be deemed to limit the powers of the BSE to those contained herein, and the Committee may at any time exercise any further powers granted to it in terms of the BSEA. Where the Committee exercises discretion in terms of these listings requirements, it shall be at its

sole discretion and its rulings shall be final provided that such discretion is reasonably exercised.

### **1.3 General Principles**

- (a) It is impracticable and undesirable for the BSE's requirements and procedures to attempt to govern all circumstances that may arise in commercial practice. Accordingly, the Listing Requirements fall into two categories as follows:
- (i) general principles (the "**General Principles**") which are set out below and which must be observed in all corporate actions and also in all submissions pertaining to securities listed and to be listed; and
  - (ii) the Listing Requirements (the "**Listings Requirements**") which consists of the sections, schedules and practice notes. The Listings Requirements are based on the application and interpretation of the General Principles by the BSE.

The spirit of the General Principles and the Listings Requirements may be applied by the BSE in areas or circumstances not expressly covered in this document.

- (b) The underlying General Principles of the Listing Requirements include the following:
- (i) applicants shall have minimum standards of quality, operations, management experience and expertise;
  - (ii) investors and the public will be kept fully informed by the listed issuers of all facts or information that might affect their interests and in particular, full, accurate and timely disclosure will be made of any information which may reasonably be expected to have a significant effect on the price, value or market activity in the securities of listed issuers
  - (iii) all holders of listed securities shall be treated fairly and equitably;
  - (iv) directors, officers and advisers of listed issuers will maintain the highest standards of integrity, accountability, corporate governance and responsibility; and
  - (v) directors of an issuer shall act in the interests of shareholders as a whole.
  - (vi) Securities should be brought to the market in a way that is appropriate and which will facilitate an open, liquid and efficient market for trading of securities.

### **1.4 Application of the Listing Requirements**

- (a) The Listings Requirements set out in this document apply to companies seeking a listing for the first time, presently listed companies, all other

classes of equity securities that applicants may wish to list and those presently listed and, where applicable, to directors (as defined in each relevant section) of applicant issuers and registered advisors.

- (b) The listing Requirements contain principles and procedures governing new applications, corporate actions and continuing obligations applicable to issuers. They are furthermore aimed at ensuring that the business of the BSE is carried on with due regard to the public interest.
- (c) The BSE Listings Requirements are interpreted, administered and enforced by the BSE. The Listing requirements and any interpretation thereof by the Exchange are conclusive and binding on an issuer. The Exchange may at any time vary a decision in any way, or revoke it if circumstances so warrant. It may do so upon the application of the issuer or of its own accord and at its discretion. The variation or revocation will take effect from the date specified by the Exchange.
- (d) The Exchange may impose additional requirements or make any listing subject to special conditions whenever it considers it appropriate in keeping with the general principles.
- (e) The Exchange may waive or modify compliance with a listing rule (or part of a rule) either generally or to suit the circumstances of a particular case, unless the listing rule specifies that the Exchange will not waive it. The Exchange may grant a waiver subject to such conditions, as it considers appropriate. If the Exchange waives a listing rule (or part of a rule) subject to a condition, the condition must be satisfied for the waiver to be effective. Where a waiver is granted, the issuer must announce the waiver, the reasons for seeking the waiver and the conditions, if any, upon which the waiver is granted as soon as practicable.
- (f) The Listing Requirements may be amended by the Exchange from time to time, subject to approval by NBFIRA.
- (g) If there is any doubt as to the interpretation or application of the Listings Requirements the BSE must be consulted.
- (h) Where the Exchange rejects an application made pursuant to the Listings Requirements, it may, if it considers it appropriate, disclose the reasons for its decision but is under no obligation to do so.

## **1.5 Obligation to comply**

- (a) A listed issuer, whether or not admission of its securities had taken place before these Requirements were prescribed, is, by virtue of its admission to the Official List, bound by these Requirements, the Rules of the CSDB and any amendments thereto made from time to time.
- (b) A listed issuer, a management company, a trustee, its directors, officers, advisers or any other person to whom these Requirements are directed must comply with these Requirements for so long as the listed issuer or its

securities remain listed on the Official List. This applies even during periods when the listed issuer's securities are suspended from trading.

## **1.6 Competent authority**

- (a) Under the provision of the BSE Board Charter, the Committee has delegated its authority, inter alia, to review all matters relating to the listings requirements, including, decisions on continuing obligations or interpretation of the listings requirements, authority to examine and approve all applications for listing and supporting documentation, subject to certain conditions, to the BSE Listings Executive Committee, Chaired by the CEO of the BSE.

The BSE Listings Executive Committee shall refer any application that requires special dispensation or waiver of the Listings Requirements to the Listings & Trading sub-Committee for consideration.

- (b) In the event a party subject to a decision made by the BSE Listings Executive Committee is aggrieved with the decision, the party may appeal the decision to the BSE Listings & Trading sub-Committee within 30 calendar days of the written ruling.

## **1.7 Companies with listings on other stock exchanges**

Attention is drawn to the fact that other stock exchanges may have different requirements relating to the issue of securities. Companies with a primary listing on the BSE which are also quoted on such other exchanges should, therefore ensure that the requirements of both the BSE and other such exchanges are complied with when submitting draft documents to the BSE Listings Executive Committee for approval.

Where a company's primary listing is on a Recognized Exchange, the BSE will accept the listings requirements of that exchange but reserves the right to request such company to comply with such aspects of the BSE Listings Requirements and/or additional requirements as it may, determine, in order to ensure that locally based investors are not disadvantaged by Rules of the primary Exchange where applicable.

## **1.8 Trading of listed securities**

The trading of securities listed on the BSE will take place as per the Trading Rules of the Exchange.

## **1.9 Indemnity**

When the Exchange publishes or releases an issuer's announcement on its behalf, the Exchange shall not be responsible to check the accuracy of the facts or any of the contents of such announcement, and shall not be liable for any damages or losses however arising as a result of publishing the announcement or disseminating the information in the announcement. The issuer shall indemnify the Exchange for any such losses or damages or costs, including any arising as a result of legal proceedings brought by any third party.



## CHAPTER 2 - Conditions for Listing

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### 2.1 Scope of section

In considering whether a company is suitable for a listing on the BSE there are certain pre-conditions which must be fulfilled. This Chapter sets out the minimum conditions which are to be met by an applicant.

### 2.2 Introduction

- (a) Listings and/or additional listings of securities are granted subject to compliance with the Listings Requirements of the BSE now or hereinafter in force.
- (b) All applications for listing are to be submitted to the BSE through a sponsoring broker.
- (c) When assessing an application for listing, the BSE may:
  - (i) carry out enquiries and request further information which it considers appropriate, including consulting with other regulators;
  - (ii) request that an applicant, or its specified representatives answer questions and explain any matter the BSE considers relevant to the application for listing;
  - (iii) take into account any additional information which it considers appropriate in relation to the application for listing;
  - (iv) request that any information provided by the applicant be verified in such manner as thought fit;
  - (v) impose any additional conditions on the applicant as considered to be appropriate.
- (d) The rules listed below are not exhaustive and where circumstances and context are different to those described in the rules, the sponsoring broker should engage with the BSE at an early stage to avoid delays.
- (e) Applicants are required to submit to the BSE, at an early stage, any matter or unusual feature pertaining to the listing not specifically provided for in the listings requirements.

### 2.3 Applicant to be duly constituted

- (a) The applicant must be duly incorporated or otherwise be validly established under the law of the country of incorporation or establishment, and must be operating in conformity with its constitution and all laws of its country of incorporation or establishment.
- (b) No application will be considered until the constitution of the applicant has been approved by the BSE.
- (c) An applicant seeking a listing on the BSE must contractually undertake to the BSE in the form of a resolution of directors, as set out in **Appendix 3B**, that from the date of admission to listing of any of its securities it will comply fully



with all the Listings Requirements of the BSE as amended from time to time, irrespective of the jurisdiction in which the applicant is incorporated.

## **2.4 Directors and Senior Management**

- (a) The key persons of an applicant must collectively have appropriate expertise and experience for the governance and management of the applicant. The applicant's Audit Committee must consider and satisfy itself of the appropriateness of the expertise and experience of the Finance Director or Chief Financial Officer.
- (b) All members of the Board of Directors of a company applying for listing on the Exchange must attend an induction workshop on the Listings Requirements and Corporate Governance, prior to their company's listing.
- (c) An applicant must ensure that each of its key persons is free from conflicts between duties to the company and private interests and other duties which might be detrimental to the business or prospects of the applicant.
- (d) Key persons must have received favourable vetting results from NBFIRA.
- (e) The directors of an applicant shall individually undertake to the BSE that they have exercised their fiduciary duties with due regard to the provisions of the constitution of the applicant and that they will honour their responsibility for the applicant's compliance with the listings requirements, as amended from time to time.

## **2.5 Controlling shareholder**

Where an applicant has a controlling shareholder, the BSE may require the appointment of a sufficient number of independent non-executive directors to ensure that the applicant is at all times capable of operating and making decisions independently of the controlling shareholder and that all transactions between the applicant and the controlling shareholder are conducted at arm's length and on a normal commercial basis.

## **2.6 Financial information**

The following requirements relate to the preparation and disclosure of financial information:

- (a) the applicant must comply with IFRS and its financial statements must have been reported on by the auditor and reporting accountant without qualification, disclaimer, adverse audit opinion or reference to an emphasis of matter.
- (b) any profit forecast of an applicant must be accompanied by a report by the applicant's corporate finance advisers. The report must comply with the requirements of the BSE as determined at their sole discretion, and include confirmation that the forecast or estimate has been properly compiled on the basis stated and that it is presented on a basis consistent with the accounting policies of the company or group in question.

## **2.7 Status of the securities**

- (a) The securities for which a listing is sought must be issued in conformity with the law of the applicant's country of incorporation or establishment and in conformity with the applicant's constitution and all authorisations needed for their creation and issue under such law.
- (b) Where a new applicant already has securities listed on another stock exchange, it must be in compliance with the requirements of that exchange and the relevant laws of that country.
- (c) Securities in each class for which listing is applied must rank *pari passu* in respect of all rights. For the avoidance of doubt, an applicant must ensure that all holders of any class of its securities receive fair and equal treatment. An applicant shall not issue any securities with a voting right differing from other securities of the same class.

## **2.8 Transferability of securities**

The securities for which listing is sought must be fully paid up and freely transferable unless otherwise required by statute.

## **2.9 Whole class to be listed**

An application for listing of securities of any class must relate to all securities of that class, issued or proposed to be issued.

## **2.10 Criteria for Main board listing**

An applicant seeking a listing on the main board must satisfy the following criteria:

- (a) The BSE will list securities held by the promoters of the companies listed on the main board subject to the following:
  - (i) Undertaking by the Promoters that securities amounting to 75% of their individual holdings in such company shall be placed in a locked account by the CSDB, subject to the CSDB Rules.
  - (ii) Trading in these shares shall be prohibited for a minimum of 2 years, and confirmation to that effect from the CSDB must be lodged with the BSE.
- (b) subscribed capital (including reserves but excluding minority interests, revaluations of assets that are not supported by a valuation by an independent professional expert acceptable to the BSE prepared within the last six months and intangible assets) of at least P5 000 000;
- (c) not less than 1 000 000 equity shares in issue;
- (d) Produce Audited full year or interim financial statements prepared as at a date which does not exceed 6 months prior to an application being made for a listing;
- (e) a satisfactory profit history for the preceding three financial years, the last of which reported an audited profit of at least P1 000 000 before taxation. In the event of a company without a track record or an inadequate track record,

- profit forecast for 3 years should be prepared giving details of the assumptions made in arriving at such forecasts and giving reasons as to why the BSE should consider a listing on the Main Board;
- (f) 30% of each class of securities shall be held by the public.
  - (g) the number of public shareholders of listed securities shall be at least:
    - (i) 300 for ordinary shares
    - (ii) 100 for other classes of equity

## **2.11 Criteria to list on the Venture Capital Board**

The following are the requirements relating to the granting of a listing on the Venture Capital Board (VCB):

- (a) The BSE will list securities held by the promoters of the companies listed on the VCB subject to the following:
  - (i) Undertaking by the Promoters that securities amounting to 75% of their individual holdings in such company shall be placed in a locked account by the CSDB, subject to the CSDB Rules.
  - (ii) Trading in these shares shall be prohibited for a minimum of 2 years, and confirmation to that effect from the CSDB must be lodged with the BSE.
- (b) Applicants seeking a listing on the VCB must satisfy the following criteria:
  - (i) a subscribed capital, (including reserves but excluding minority interests, revaluations of assets that are supported by a valuation by an independent professional expert acceptable to the BSE prepared within the last six months and intangible assets) of at least P2 500 000.
  - (ii) not less than 1 000 000 equity shares in issue;
  - (iii) a profit history is not necessary but the applicant should, in its analysis of future earnings, provide a profit forecast of 3 years giving assumptions made in arriving at such forecast;
  - (iv) a minimum of 10% of each class of equity share shall be held by the public;
  - (v) the number of public shareholders shall be at least 100 for equity shares, 50 for preference shares;
  - (vi) evidence to the effect that directors and senior managers have successful records of achievement in their respective roles; and
  - (vii) a three-year business plan including an analysis of its prospects based on market segment growth, competitive analysis and market share. The company must also prepare a forecast balance sheet, income statement and cash flow statement in accordance with IFRS.
  - (viii) In the event an applicant to the VCB has an operating history, Produce Audited full year or interim year financial statements prepared as

at a date which does not exceed 6 months prior to an application being made for a listing;

## **2.12 Dual Listings**

Companies seeking to dual list on the BSE must:

- (a) Comply with the minimum listings criteria set out under rules 2.10 and 2.11 subject to the stated number of public shareholders referred to in rule 2.10 (g) and 2.11 (b) (v) being resident in Botswana.
- (b) As a precondition for listing, make an offer for sale of shares to the public of a size to be determined in consultation with the BSE (based on demand for the said company's shares).
- (c) Appoint a market maker in Botswana.

## **2.13 Dematerialisation**

- (a) Share registers of local companies applying for listing on the BSE must be 100% dematerialised.
- (b) The Botswana share registers of foreign companies applying for listing on the BSE must be 100% dematerialised.

## CHAPTER 3 - Methods and Procedures of Bringing Securities to Listing

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### 3.1 Scope of section

This Chapter sets out the methods and procedures for an issuer seeking admission to the Official List of the BSE and a listing of its equity securities. These requirements are generally applicable to all issuers, including companies incorporated in Botswana or elsewhere. The BSE may vary the requirements in a particular case taking into account the context and circumstances of the listing.

### 3.2 General Requirements

- (a) An issuer may apply for admission to the Official List of the BSE Main board or Venture Capital Board. The listing may be a primary or a secondary listing. The BSE has absolute discretion concerning the admission of an issuer to the BSE's Official List (and its removal) and granting a listing for its securities (and their suspension or delisting).
- (b) The BSE may approve applications for listing unconditionally or subject to condition(s), or may reject applications for listing, as it considers appropriate. The BSE also reserves the right to vary any such condition(s) or impose additional conditions.
- (c) An issuer seeking listing of its equity securities must be a going concern or be the successor of a going concern. In reviewing a listing application, the Exchange will consider a number of factors, including the specific requirements set out in this Rules and qualitative factors set out in the Rules. While the size of an issuer is important, greater emphasis is placed on factors such as the integrity of the management and controlling shareholders, and the disclosure provided in the prospectus, offering memorandum or introductory document.
- (d) The Exchange may prescribe additional or other requirements for the listing of specific types of issuers including amongst others Property companies and Mineral companies not specifically addressed by this Chapter.
- (e) An approval for a listing shall not be granted if an applicant has had an issue/allotment or private placement of its securities 1 year prior to the listing save where it is an external company seeking a secondary listing on the BSE.

### 3.3 Methods of listing - Initial listings

An issuer may seek an initial listing on the BSE either by way of an Initial Public Offering (IPO) or through an Introduction, subject to compliance with the Listing Rules and such other conditions as the BSE may consider appropriate.

#### (a) Initial Public Offerings

An IPO can take place either through a subscription issue or an offer for sale.

**(i) Subscription Issue**

1. A Subscription Issue is an invitation to the public, by the company seeking a listing, to subscribe for its securities to be issued.
2. The issuer must state the minimum level of subscription, below which the issue would be cancelled and the subscription would be refunded.
3. The BSE must be satisfied as to the fairness of the basis of allotment.

**(ii) Offer for Sale**

1. An offer for sale is an invitation to the public by the company for and on behalf of the holders of securities to purchase securities of the issuer already in issue.
2. The BSE must be satisfied as to the fairness of the basis of allotment.
3. The company shall give the BSE an undertaking that the holder/s of securities being offered will not dispose of those securities whilst the offer for sale is pending.

**(b) Procedures for IPOs**

An applicant must submit the following documents to the Exchange in order to obtain a conditional approval for listing:

- (i) A formal application letter for listing including the details set out in **Appendix 3A**.
- (ii) A general undertaking by the company in the form of a resolution of the board of directors, certified by the chairman complying with **Appendix 3B**.
- (iii) Individual undertakings by each Director of the applicant to the BSE that they have exercised their fiduciary duties with due regard to the provisions of the constitution of the applicant and that they will honour their responsibility for the applicant's compliance with the listings requirements, as amended from time to time.
- (iv) The proposed disclosure document dated and signed by the directors of the company including their respective alternates, or under power of attorney, complying with **Chapter 4**.
- (v) Copies of any experts' consents appearing in the disclosure document.
- (vi) An Underwriting agreement.
- (vii) A certificate from the company's attorneys stating that the requirements of the Act have been complied with in preparing the company for listing.
- (viii) If the disclosure document contains an accountants' report, a statement from the accountant that the contents of the disclosure document are not contradictory with the information contained in the accountants' report.

- (ix) A statement whether the company's securities are listed on any exchange outside Botswana and particulars of that listing supported by a letter of good standing from such exchange. In the event of any application for listing on any stock exchange having been refused or deferred, such details are to be stated.
  - (x) A list of other companies of which the applicant's directors are also directors and the nature of business conducted by such companies.
  - (xi) The applicant's constitution complying with **Appendix 3C**.
  - (xii) Proposed basis for allotment of securities in the event of over subscription;
- (c) Should amendments to the submitted documents be required by the BSE, the amended documents, must be re-submitted and approved, prior to publication.
- (d) After completion of the IPO process, but prior to receiving a formal approval to list on the BSE, the applicant must submit the following documents to the exchange.
- (i) An analysis of securities held by shareholders of the applicant post IPO giving details including:
    1. the number of securities applied for by the public, the number allotted and the basis of allotment;
    2. the number of securities taken up by the underwriter;
    3. the number of shareholders in Botswana and outside of Botswana;
    4. the number of securities issued for cash to the public with the price of the issue and the actual amount per share paid;
    5. the number of securities allotted for a consideration other than cash;
    6. the number of shareholders who are employees and are beneficiaries of any trust or scheme for their benefit, and the total number of securities held by them;
    7. details of securities held by the directors and any controlling shareholder and any associate of such director and controlling shareholder, and any associates of the company. Also the securities held by the adviser/s and, promoter/s.
  - (ii) A certificate by the company's attorneys and sponsoring broker certifying that the disclosure document published was in accordance with the signed disclosure document approved by the BSE or, if not, then in what respects it did not so comply;
  - (iii) A copy of the newspaper(s) in which the abridged disclosure document or announcement(s) relating to the issue were published.
  - (iv) Three copies of the disclosure document published;
  - (v) A notarially certified copy of the constitution of the applicant embodying any amendments required by the BSE. (This document

may be submitted within such extended period as may be agreed to by the BSE, on the company's written application setting out the circumstances);

- (vi) A notarially certified copy of certificate of incorporation;
- (vii) A statutory declaration complying with **Appendix 3D**;
- (viii) Application for temporary documents of title if applicable;
- (ix) Payment of the listing fee;
- (x) In the case an external company, confirmation that it has opened and will maintain a transfer office in Botswana during such time as the securities are listed on the BSE;
- (xi) Confirmation that the minimum subscription has been received;
- (xii) Confirmation, where applicable, that the purchase of any assets has been completed, their transfer registered in the name of the issuer and the purchase money was paid subsequent to registration of transfer. Where any such purchase has not been completed or registered an undertaking that completion will be conditional upon registration; and
- (xiii) Confirmation that all monies refundable in respect of any application or where no allotment has been made have been refunded to the applicants.

The following documents may be submitted as soon as soon as practical after the listing of the Company, but no later than 30 calendar days from the date of listing;

- (xiv) A certificate signed by the board of directors, certifying that the capital raised from the issue, has been subscribed and deposited, for the company's account, with the company's bankers;
- (xv) A list of shareholders certified by the company secretary as at the date listing was granted.

### **(e) Press Announcements**

A listed company shall issue a press announcement which shall be an abridged version of the disclosure document, as shall be approved by the BSE.

### **(f) Timetable**

The following timetable is applicable to IPO's:

<b>Day</b>	<b>Event</b>
D	Publication of the abridged disclosure document and opening of the offer. Circulation of the disclosure document and application forms.
D+21	Offer closes
D+23	Results of the offer submitted to the BSE
D+26	Formal decision by the BSE
D+27	Results announcement published by the applicant
D+33	Last date for refund cheques to be returned.
D+34	Securities listed on the BSE if listing granted and uploading of securities into



**(g) Refunds on rejected Applications**

The listed company shall make such refund payments to the bank account specified by the applicant, through Electronic Fund Transfer (EFT) and a payment advice shall be issued to the applicant. If the applicant has not provided details of his bank account in the application, the listed company shall make such refund payments to the applicant by way of a cheque.

**(h) Listing through an Introduction**

An issuer may apply for a listing of its securities by way of introduction without undertaking an IPO, if it complies with the relevant shareholding spread requirements.

An introduction will normally be permitted in the following circumstances:

- (i) Where the security for which listing is sought is already listed on another stock exchange;
- (ii) where the securities of an issuer (for example, a wholly owned subsidiary of a listed issuer) are distributed in kind by a listed issuer to the shareholders of that listed issuer or to the shareholders of another listed issuer (for example, where the first listed issuer has a listed subsidiary); or
- (iii) where a holding company is formed and its securities are issued in exchange for those of one or more listed issuers.

**(i) Market maker mandatory for introductions**

An introduction shall be permitted only if the applicant company appoints a market maker to facilitate the trading of its shares on the BSE.

**(j) Procedures for listing by Introduction**

- (i) Sections 3.3 (b) (i) – (x), 3.3(d)iv to viii and x in respect of IPO's also apply to Introductions. In addition, an analysis of securities held by shareholders of the applicant shall be submitted to the BSE, giving details including:
  - 1. the number of securities held by the public
  - 2. the number of shareholders in Botswana and outside of Botswana,
  - 3. the number of shareholders who are employees and are beneficiaries of any trust or scheme for their benefit, and the total number of securities held by them.
  - 4. details of securities held by the directors and any controlling shareholder and any associate of such director and controlling shareholder, and any associates of the company. Also the securities held by the adviser/s and, promoter/s.

- (ii) Should amendments to the submitted documents be required by the BSE, the amended documents, must be re-submitted and approved, prior to publication.
- (iii) After formal approval to list on the BSE, the applicant must submit to the Exchange the documents set out in Sections 3.3 (d) i, ii and iii.

(k) **Press Announcements for introductions**

A listed company shall issue a press announcement which shall be an abridged version of the disclosure document, as shall be approved by the BSE.

### 3.4 Methods of listing - Additional listing of securities

Applicants with securities already listed may bring securities (whether or not of a class already listed) to listing by any of the following methods:

(a) **Rights issues**

A rights offer is an offer to existing holders of securities to subscribe for or purchase further securities in proportion to their holdings made by means of the issue of a renounceable letter or other negotiable document which may be traded as "nil paid" rights for a specified period.

(i) **Rights issue announcements**

1. A listed company shall not announce the rights issue to shareholders or the public until the rights issue and listing of shares emanating from the rights issue is approved, in principle, by the Exchange.
2. The press announcement shall be an abridged version of the disclosure document, as shall be approved by the BSE.

(ii) **Rights issue Timetable**

The following timetable is applicable to a listed company making a rights offer:

Day	Event
D	Approval of the rights issue circular by the BSE
D+5	Publication and distribution of both full and abridged circulars
D+27	General meeting to approve the rights offer
D+28	Decision of the General meeting submitted to the Exchange for notification to the market
D+29	Ex-rights date
D+30	Letters of allotment dispatched/ rights uploaded to CSD with notice to shareholders
D+44	Last date for trading in rights
D+51	-Notification to the BSE of the conclusion of the rights offer and approval for listing by the BSE -Conversion of rights into shares/uploading of converted rights into CSD system (listing of shares)

1. The ratios for rights offers should ideally not give rise to fractions of securities. In the event such ratio gives rise to a fraction the method of rounding such fraction to a 'whole number' should be stated.
2. Rights offers priced at above the trading price as at the date of application require the listed company to give reasons for the pricing decision.
3. Letters of allocation must be listed.

**(iii) Allotment of Additional Shares**

In respect of application for additional shares, the pool of excess securities should be allocated equitably, taking cognisance of the number of securities held by the shareholder (including those taken up as a result of the rights offer) and the additional shares applied for by such shareholder.

**(iv) Banking of Cheques**

1. Cheques received in respect of the rights may be banked on receipt.
2. Cheques in respect of applications for additional rights shall be banked only after the last date of acceptance and payment.
3. Refunds in respect of rejected/partly rejected applications for shares shall be dispatched to the shareholders as expeditiously as possible but not exceeding seven (7) calendar Days from the last date of acceptance and payment.

The listed company shall make such refund payments to the bank account specified by the applicant, through Electronic Fund Transfer (EFT) and a payment advice shall be issued to the applicant. If the applicant has not provided details of his bank account in the application, the listed company shall make such refund payments to the applicant by way of a cheque.

**(v) Change in the use of Funds**

In the event the Board of Directors of an applicant does not utilize the funds raised through a Rights Issue for the objective/s approved by the shareholders and decides to utilize the funds for another objective/s, the listed company shall make an announcement to the Exchange of this decision and shall obtain shareholder approval at a General Meeting.

**(b) Claw-back offers**

A claw-back offer is an issue of securities for cash by an applicant to persons where the securities are then offered by such persons to the applicant's shareholders in proportion to their holdings.

The requirements set out above in respect of rights offers shall also apply to claw-back offers.

**(c) Private Placements**

A private placement by a listed Company is defined as the raising of capital through the issue of securities in a manner that would violate the preemptive rights of existing holders of such securities. This includes any securities issued as consideration for mergers and/or acquisitions.

- (i) The listed company must obtain the prior approval from its existing shareholders at a general meeting before engaging in private placements.
- (ii) The listed company must also obtain the approval of the BSE before engaging in private placements. The BSE may not permit a listed company to issue securities by way of a private placement if there is likely to be public demand for the securities unless such private placement is of a strategic nature.

**(d) Public Issues**

A Public Issue is the obtaining of subscriptions for the sale of securities by a listed company from public investors.

The requirements set out with respect to Subscription Issues shall also apply to Public Issues.

**(e) Scrip Issue and Capitalisation (Bonus) Issues**

A scrip issue is where the reserves of a company are capitalised as shares and distributed to shareholders on a declared and approved basis. A scrip issue or bonus issue which includes a cash pay-out option is referred to as a scrip dividend.

**(i) Announcement of Scrip and/or Capitalisation (Bonus) Issues**

1. A listed company shall not announce a scrip issue to shareholders or the public until the scrip issue and listing of shares emanating from such scrip issue is approved, in principle, by the Exchange.
2. The announcements in respect of a scrip issue shall be an abridged version of the Disclosure Document, as shall be approved by the BSE.

**(ii) Timetable for Scrip and/or Capitalisation (Bonus) Issues**

The following timetable is applicable to a listed company making a bonus issue;

Day	Event
D	Approval of the bonus issue circular by the BSE
D+5	Publication and distribution of both abridged and full circular
D+27	General meeting to approve the bonus issue of shares
D+28	Decision of the General meeting announced to the Exchange for notification to the market
D+28	Ex-bonus date (closure of the scrip issue)
D+29	-Notification to the BSE of the conclusion of the bonus issue and approval for listing by the BSE -Letters of allotment dispatched / bonus shares uploaded to CSD with notice to shareholders

1. The ratios for bonus issues should ideally not give rise to fractions of securities. In the event such ratio gives rise to a fraction the method of rounding such fraction to a 'whole number' should be stated.
2. A bonus issue can be referred to as a scrip dividend only if there is an option to receive a cash dividend in lieu of the scrip.
3. Where Shareholder approval is not required for the declaration of a bonus issue and provided as such in the company's constitution, the time table referred above may be suitably amended by the BSE.

**(f) Employee Share Schemes**

An Employee share scheme shall mean a scheme involving the purchase of securities and /or the issue of shares or other securities (including options) by listed companies (or trusts formed for this purpose) to or for the benefit of employees.

- (i) The following documents pertaining to employee share schemes should be submitted to the BSE for prior approval:
  1. A draft copy of the incentive or option scheme which must comply with **Appendix 3E**;
  2. The trust deed, if applicable; and
  3. A draft of the circular or notice relating to the adoption of or amendment to a scheme by the Company's shareholders.
- (ii) Application for listing of shares in terms of employee share schemes may either be for block listings or for specific allotments.
- (iii) The BSE will grant a block listing only in multiples of P5 million for securities issued in terms of approved schemes. Subsequent issues of securities in terms of the scheme will be subtracted from the initial block until such time as that block is exhausted, at which time an application for a further block will become necessary. The BSE

reserves the right to allow a block listing for a lesser number of shares.

**(g) Convertible Securities**

- (i) A listed company issuing a security with an attached conversion right to a security already listed on the BSE should obtain the approval of the BSE prior to the issue of such securities.
- (ii) Classes of securities which have participating rights to profits or have equity conversion rights must be offered to ordinary shareholders of the listed company by means of a rights offer, unless specifically exempted by shareholders at a general meeting.

**3.5 Dematerialisation of Shares**

Companies seeking a listing on the BSE from the date that these Requirements are adopted, shall be required to amend their constitution to facilitate full dematerialisation of their securities.

**3.6 Over-allotment options (Green shoe options)**

Price stabilisation mechanism known as a "greenshoes" or, more appropriately, "over-allotment options" will be permitted for Botswana registered companies whose primary listing is on the BSE.

A company wishing to implement a greenshoes option at listing must apply to the BSE in advance and comply with the rules stated in **Appendix 3F** if approved.

**3.7 Preferential offers**

A preferential offer is an offer by an applicant to directors, employees, pensioners and direct business associates (including customers with whom there is a direct and enduring contractual relationship) of the applicant by means of a non-transferable application form bearing the name of a specific party and stating a maximum number of securities which may be subscribed for in that application.

Preferential Offers in conjunction with an IPO are limited to a maximum of 70%. The percentage of shares to be allotted to the different classes of shareholders must be decided on by the applicant subject to the review and approval of the BSE.

**3.8 Underwriting**

Rights offers and offers for sale or subscription must be underwritten. The following must be complied with where an offer is underwritten:

- (a) the underwriter must submit sworn affidavits by at least two of its directors confirming that it has the financial resources to meet its commitments in terms of the underwriting; and
- (b) the Disclosure Document must include a statement by the directors that they have made due and careful enquiry to confirm that the underwriter can meet its commitments in terms of the offer.

- (c) the underwriting commission paid to a shareholder of the company should not be above the current market rate payable to an underwriter who is not a shareholder.
- (d) The Underwriter shall sell back to the market all shares acquired from the underwriting process. In the event the underwriter fails to dispose of shares acquired under the underwriting agreement within a period of six months of the conclusion of the issue for related parties, and three months for independent parties, the Mergers and Acquisitions Rules shall apply.
- (e) The Underwriter shall not be permitted to exercise shareholder rights over any shares acquired under the underwriting agreement in excess of the threshold stipulated under the Mergers and Acquisitions Rules.
- (f) The BSE may consider partial underwriting or waiving the underwriting requirement on a case by case basis.

## **Appendix 3A**

### **Listing Application**

3A.1 The application should contain the following:

- (a) A statement that:  
"It is understood that the granting of a listing pursuant to this application shall constitute a contract between this company and the Botswana Stock Exchange and that in giving the general undertaking referred to in **Appendix 3B** of the listings requirements of the BSE ("the listings requirements"), the company undertakes to comply with the listings requirements as they may exist from time to time";
- (b) The addresses of the registered and transfer offices in the Republic of Botswana;
- (c) Regarding the applicant's share capital:
  - (i) The value and number of securities in each class;
  - (ii) the amount of the share capital issued and/or to be issued in conjunction with the application of each class of share, and the number of those securities in each class, also indicating clearly in respect of which securities listing is applied for; and
- (d) As applicable, the value and number of securities of each class to be offered to the public for subscription and the date the offer is to be made;
- (e) A statement as to the Board for which listing is applied.

3A.2 The application must be signed by the company secretary, a director of the applicant and the sponsoring broker.



## **Appendix 3B**

### **General undertaking**

The following provisions should be contained in the general undertaking by the applicant which should be in the form of a resolution of directors certified by the Chairman and Company Secretary:

- 3B.1 That the applicant will comply fully with all the Listings Requirements of the BSE as amended from time to time, irrespective of the jurisdiction in which the applicant is incorporated.
- 3B.2 That the applicant will not apply for the loan, or return, of any document submitted in support of the application for listing, and that all such documents will become the property of the BSE.
- 3B.3 That no restrictions are placed on the transfer of fully paid securities other than when the relative statutory requirements prevail.
- 3B.4 That the constitution of the applicant and its subsidiary companies comply with the listings requirements which now are or hereafter may be in force.
- 3B.5 That securities in each class for which listing is applied rank pari passu in respect of dividends, rights and in all other respects.
- 3B.6 That in the event of any further offer of securities to shareholders, powers of renunciation will be granted in respect of any rights accruing to shareholders and an application for listing of the provisional documents will be made within sufficient time before the closing of the share registers.
- 3B.7 That where the applicant is already listed or is subsequently granted a listing on another stock exchange and notification of any preliminary or other announcement is made by the applicant from time to time to that stock exchange, copies of all such notifications will be made available simultaneously to the BSE.
- 3B.8 That the applicant will, in future, furnish the BSE with a soft copy in PDF and 2 (two) hard copies of the applicant's annual report when it is issued for distribution to shareholders.
- 3B.9 That all non-price sensitive communications from the applicant to the BSE will be by letter through the Sponsor and all potentially price sensitive communication will emanate from the compliance officer of the applicant or any other duly authorised persons directly to the BSE.
- 3B.10 That in the event of the company being placed under judicial management or liquidation, whether voluntary or compulsory, Provisional or final, the applicant will immediately notify the BSE of this fact.

## **Appendix 3C**

### **Requirements for Constitution**

- 3C.1** No application for listing will be considered until the constitution of the applicant or other instrument constituting or defining the objects has been approved by the BSE.

These documents must be in English and must comply with the requirements in the Act and requirements in respect of an applicant or in respect of any of the applicant's subsidiary companies whose securities are not sought to be separately listed.

The requirements laid down are not exhaustive and shall be read in conjunction with any requirements in the Act. The BSE will not allow any provisions contained in the constitution which may in any way restrict free dealings in the securities or which may, in the BSE's opinion be unreasonable or which are unlawful.

### **3C.2 Contents of the Constitution**

**(a) Transfer of securities**

Notwithstanding any provision in these Rules suggesting the contrary, shares listed on the BSE shall be freely transferable and registration of the transfer of such listed shares shall not be subject to any restriction, save to the extent required for compliance with statutory requirements or any other Rules of the BSE.

**(b) Issue of securities**

In the case of new applicants for listing, the Constitution must require that all shares be issued in electronic form.

**(c) Transmission clause**

A provision to the effect that securities registered in the name of a deceased or insolvent shareholder shall be forfeited if the executor fails to register them in his own name or in the name of the heir etc., when called upon by the directors to do so will not be permitted.

**(d) Capital**

Power should be contained in the articles for:

- (i) increase of capital;
- (ii) consolidation of securities;
- (iii) conversion of securities into stock;
- (iv) sub-division of securities;
- (v) cancellation of securities;
- (vi) reduction of capital;
- (vii) conversion of securities into no par value and vice versa;
- (viii) conversion of ordinary shares into redeemable preference shares; and
- (ix) conversion of securities of any class into securities of any other class, whether issued or not.

- (e)** Provision should be made that new securities created shall be offered to the existing shareholders pro rata to their shareholding or that new securities are only to be disposed of or dealt with as directed by a general meeting of

shareholders. Subject to the listings requirements of the BSE, the constitution may however in addition to the above provide that the shareholders in a general meeting may authorise the directors to issue the new securities as the directors in their discretion may deem fit.

**(f)** Provision should be made that in the case 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.

**(g) Notices**

i) In the constitution of all companies provision should be made for sending notices of meetings to the BSE at the same time as notices are sent to shareholders.

ii) Notices are to be sent to all registered members. Notices to the holders of share warrants, (unless the conditions of issue provide that such holders are to receive notices) shall be given by advertisement in Botswana on X-News and a national newspaper.

### **3C.3 Compliance with Rules**

Notwithstanding anything to the contrary contained in the Constitution of the Company, so long as the Company is listed in the BSE, the Company shall comply with the Rules of the Exchange and the Central Securities Depository Company of Botswana Limited, which shall be in force from time to time.

### **Appendix 3D**

#### **Declaration by Chairman**

A sworn declaration by the chairman and secretary of the applicant must state, to the best of their knowledge, judgement and belief, arrived at after due and careful enquiry, where applicable, the following particulars:

- 3D.1 That all documents required by the Act, have been duly filed with the Registrar of Companies, and that all legal requirements have been fulfilled.
- 3D.2 That all documents specified in Chapter 4 have been or are lying open for inspection in the manner prescribed.
- 3D.3 That there are no other circumstances arising from the application which should be disclosed to the BSE.

## **Appendix 3E**

### **Requirements for executive and staff share schemes**

The following provisions apply, with appropriate modifications, to all schemes involving the purchase of securities and/or the issue of shares or other securities (including options) by listed companies (or trusts formed for this purpose) to, or for the benefit of, employees. They apply also to schemes of all subsidiaries of listed companies.

The BSE must be consulted on the application of these provisions to schemes intended to apply to employees of associates.

- 3E.1 The scheme, which must be approved by shareholders of the listed company or company applying for listing in general meeting prior to its implementation, must contain provisions relating to:
- (a) the category of persons to whom or for the benefit of whom securities may be purchased or issued under the scheme ("participants"). Notwithstanding the above requirement, the Committee restricts the definition of participants to persons involved in the business of the group including non-executive directors;
  - (b) the aggregate number of securities which may be utilised for purposes of the scheme which must be stated together with the percentage of the issued share capital that it represents at that time;
  - (c) a fixed maximum percentage for any one participant;
  - (d) the amount, if any, payable on application or acceptance; the basis for determining the purchase, subscription or option price which must be a fixed mechanism for all participants; the period in which payments, or loans to provide the same, may be paid or after which payments or loans to provide the same, must be paid; the terms of any loan; the procedure to be adopted on termination of employment or retirement of a participant; and
  - (e) the voting, dividend, transfer and other rights, including those arising on a liquidation of the company, attaching to the securities and to any options (if appropriate).
- 3E.2 A scheme may provide, in the event of a capitalisation issue, a rights issue, subdivision, consolidation of securities or reduction of capital, for adjustment of the purchase, subscription or option price or the number or amount of securities subject to options already granted to participants and to the scheme. Such adjustments should give a participant entitlement to the same proportion of the equity capital as that to which he was previously entitled:
- (a) the issue of securities as consideration for an acquisition or a waiver of pre-emptive rights will not be regarded as a circumstance requiring adjustment; and
  - (b) adjustments, where necessary must be confirmed to the directors in writing by the company's auditors that these are calculated on a reasonable basis.

- 3E.3 The scheme must provide, or the circular must state, that the provisions relating to the matters contained in 3E.1 above cannot be altered without the prior approval of shareholders in general meeting.
- 3E.4 The trustees may not be participants under the scheme.
- 3E.5 Shares shall upon release to participants rank pari passu in all respects with the existing issued shares of the company.
- 3E.6 Application must be made for a listing of those securities of a class already listed at the time of their issue.
- 3E.7 The scheme document, if not circulated to the shareholders, must be available for inspection for at least 14 days at the company's registered office or such other places as the BSE may agree.
- 3E.8 The terms of the resolution must approve a specific scheme and refer either to the scheme itself (if circulated to the shareholders) or to a summary of its principal terms included in the circular which must contain all the provisions set out in paragraph 3E.1 above.
- 3E.9 The listed company must, in respect of its or its subsidiary companies schemes, summarise in its annual financial statements the number of securities which may be utilised for purposes of the scheme at the beginning of the accounting period, changes in such number during the accounting period and the balance of securities available for utilisation for purposes of the scheme at the end of the accounting period.

## **Appendix 3F**

### **Rules for the implementation of the over-allotment option**

- 3F.1 An issuer making a public offer of equity shares can utilise the Green Shoe Option (GSO) to stabilize the post listing price of its shares, subject to the approval of the BSE and the provisions of this Appendix.
- 3F.2 A company desirous of availing the option granted by this chapter, shall in the resolution of the general meeting authorizing the public issue, obtain authorization also for the possibility of allotment of further shares to the 'stabilizing agent' (SA) at the end of the stabilization period in terms of clause 3F.16.
- 3F.3 The company shall appoint one of the merchant bankers or Book Runners, as the case may be, from amongst the issue management team, as the SA, who will be responsible for the price stabilization process, if required. The SA shall enter into an agreement with the Issuer Company, prior to submission of offer document to the BSE, clearly stating all the terms and conditions relating to this option including fees charged / expenses to be incurred by SA for this purpose.
- 3F.4 The SA shall also enter into an agreement with the promoter(s) or pre-issue shareholders who will lend their shares under the provisions of this appendix, specifying the maximum number of shares that may be borrowed from the promoters or the shareholders, which shall not be in excess of 15% of the total issue size.
- 3F.5 The details of the agreements mentioned in clause 3F.3 and 3F.4 shall be disclosed in the Prospectus. The agreements shall also be included as documents for public inspection.
- 3F.6 Lead merchant banker or the Lead Book Runner, in consultation with the SA, shall determine the amount of shares to be over allotted with the public issue, subject to the maximum number specified in clause 3F.4
- 3F.7 The prospectus shall contain the following additional disclosures:
- (a) Name of the SA
  - (b) The maximum number of shares (also as a percentage vis-a-vis the proposed issue size) proposed to be over-allotted by the company.
  - (c) The period, for which the company proposes to avail the stabilization mechanism,
  - (d) The maximum increase in the capital of the company and the shareholding pattern post issue, in case the company is required to allot further shares to the full extent of over-allotment in the issue.
  - (e) The maximum amount of funds to be received by the company in case of further allotment and the use of these additional funds
  - (f) Details of the agreement/ arrangement entered into by SA with the promoters to borrow shares from the latter which inter-alia shall include name of the promoters, their existing shareholding, number & percentage of shares to be lent by them and other important terms and conditions including the rights and obligations of each party.

- (g) The prospectus shall additionally disclose the exact number of shares to be allotted pursuant to the public issue, stating separately therein the number of shares to be borrowed from the promoters and over allotted by the SA, and the percentage of such shares in relation to the total issue size.
- 3F.8 In the case of both an initial public offer by an unlisted company, or a public issue by a listed company,
- (a) the promoters and pre-issue shareholders each holding more than 5% of shares in issue may lend the shares subject to the provisions of this appendix.
  - (b) The SA shall borrow shares from the promoters or the pre-issue shareholders of the issuer company or both, to the extent of the proposed over-allotment.
  - (c) The shares referred to in this clause shall be in dematerialized form only.
- 3F.9 The allocation of these shares shall be pro-rata to all the applicants.
- 3F.10 The stabilization mechanism shall be available for the period disclosed by the company in the prospectus, which shall not exceed 30 calendar days from the date when trading permission is given by the exchange.
- 3F.11 The SA shall open a special account with a bank to be called the “Special Account for GSO proceeds of \_\_\_\_\_ (name of company)” (hereinafter referred to as the GSO Bank account) and a special account for securities with the CSDB to be called the “Special Account for GSO shares of \_\_\_\_\_ (name of company)” (hereinafter referred to as the GSO Demat Account).
- 3F.12 The money received from the investors against the overallotment in the green shoe option shall be kept in the GSO Bank Account, distinct from the issue account and shall be used for the purpose of buying shares from the market, during the stabilization period.
- 3F.13 The shares bought from the market by the SA, if any during the stabilization period, shall be credited to the GSO Demat Account.
- 3F.14 The shares bought from the market and lying in the GSO Demat Account shall be returned to the promoters immediately, in any case not later than 3 working days after the close of the stabilization period.
- 3F.15 The prime responsibility of the SA shall be to stabilize post listing price of the shares. To this end, the SA shall determine the timing of buying the shares, the quantity to be bought, the price at which the shares are to be bought etc.
- 3F.16 On expiry of the stabilization period, in case the SA does not buy shares to the extent of shares over-allotted by the company from the market, the issuer company shall issue new shares to the extent of the shortfall in dematerialized form to the GSO Demat Account, within five days of the closure of the stabilization period. These shares shall be returned to the promoters by the SA in lieu of the shares borrowed from them and the GSO Demat Account shall be closed thereafter. The company shall make a final listing application in respect of these shares to the Exchange
- 3F.17 The shares returned to the promoters under clause 3F.14 or 3F.16, as the case may be, shall be subject to the remaining lock in period as applicable.
- 3F.18 The SA shall remit an amount equal to (further shares allotted by the issuer company to the GSO Demat Account multiplied by the issue price) to the issuer company from



the GSO Bank Account. The amount left in this account, if any, after this remittance and deduction of expenses incurred by the SA for the stabilization mechanism, shall be transferred to the investor protection fund of the stock exchange. The GSO Bank Account shall be closed soon thereafter.

- 3F.19 The SA shall submit a report to the stock exchange on a daily basis during the stabilization period. The SA shall also submit a final report to the Exchange. This report shall be signed by the SA and the company. This report shall be accompanied with a depository statement for the “GSO Demat Account” for the stabilization period, indicating the flow of the shares into and from the account. The report shall also be accompanied by an undertaking given by the SA and countersigned by the CSDB regarding confirmation of lock-in on the shares returned to the promoters in lieu of the shares borrowed from them for the purpose of the stabilization, as per the requirement specified in 3F.17.
- 3F.20 The SA shall maintain a register in respect of each issue having the green shoe option in which he acts as a SA. The register shall contain the following details of:
- (a) in respect of each transaction effected in the course of the stabilizing action, the price, date and time
  - (b) the details of the promoters from whom the shares are borrowed and the number of shares borrowed from each; and
  - (c) details of allotments made under clause 3F.16.
- 3F.21 The register must be retained for a period of at least three years from the date of the end of the stabilizing period.

### **Appendix 3G**

#### **Declaration by the Sponsoring Broker**

Botswana Stock Exchange  
Gaborone  
Botswana

Date: \_\_\_\_\_

Full name of sponsoring broker: \_\_\_\_\_

The undersigned request that you allow \_\_\_\_\_ (number) shares of \_\_\_\_\_ (denomination) each of \_\_\_\_\_ (name of issuer) to be admitted to the List.

I, \_\_\_\_\_ a partner/director/duly authorised officer of the above sponsoring broker, hereby;

- (a) confirm that I will discharge the responsibility as a sponsoring broker under the listings Requirements as amended from time to time for the purposes of the appointment;
- (b) confirm that I will advise the BSE, in writing, without delay, of my resignation or dismissal from an appointment, giving details of any relevant facts or circumstances;
- (c) acknowledge that the BSE may censure the sponsoring broker if the BSE considers that I am in breach of the responsibilities and that the BSE may publicise the fact that they have done so and the reasons for their action.

Further, I have satisfied myself to the best of my knowledge and belief, having made due and careful enquiry of the issuer and its advisers, that all the documents required by the listings requirements to be included in the application for listing have been supplied to the BSE, that all other relevant requirements of the listings requirements have been complied with; and that there are no matters other than those disclosed in the Disclosure Document or otherwise in writing to the BSE which should be taken into account by the BSE in considering the suitability for listing of the securities for which application is being made.

Should any further information come to my notice before the grant of listing, I will inform the BSE.

This declaration and undertaking is furnished to you in accordance with the listings requirements of the BSE. It may not be relied upon for any other purpose or by any other person.

SIGNED BY \_\_\_\_\_ or SIGNED BY \_\_\_\_\_ partner/director of duly authorised officer, for and on behalf of \_\_\_\_\_



## CHAPTER 4 - Disclosure Documents

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### 4.1 Scope of the Chapter

- (a) This Chapter sets out the details which must be contained in the Disclosure Documents and the procedure for their approval and publication.
- (b) In general an application for listing of securities on the official list for the first time must be accompanied by the relevant Disclosure Document. Subsequent applications for listing securities on the official list once the company's securities are already admitted (further listings) will require a Pre-listing Statement unless specified exemptions apply.
- (c) The Disclosure Document must include information in sufficient detail to enable the targeted investors to have a full and proper understanding of the applicant's business, financial conditions, prospects, and risks.
- (d) If the Disclosure Document is a prospectus, the BSE may require additional information to that required in the Companies Act and/or the Listing Rules to be disclosed.
- (e) If the Disclosure Document is a pre-listing statement the following must be written in bold letters on the front page:

“This pre-listing statement is not an invitation to the public to subscribe for securities, but is issued in compliance with the Listings Requirements of the BSE, for the purpose of providing information to the public with regard to the company.”

### 4.2 General Contents of Disclosure Documents

All Disclosure Documents should have the following information:

#### (a) Directors' Responsibility

- (i) A statement as follows, modified as required pursuant to paragraph (a) (ii) or (iii) below or in such other form as may be permitted by the BSE:

"The directors, whose names are given in paragraph ..... on page ..... of this document collectively and individually accept full responsibility for the accuracy of the information given and certify that to the best of their knowledge and belief there are no other facts, the omission of which would make any statement false or misleading, that they have made all reasonable enquiries to ascertain such facts and (if applicable) that the Disclosure Document contains all information required by law.

The directors confirm that the Disclosure Document includes all such information within their knowledge (or which it would be reasonable for them to obtain by making enquiries) that investors and their professional advisers would reasonably require and reasonably expect to find for the purpose of making an informed assessment of the

assets and liabilities, financial position, profits and losses and prospects of the issuer and of the rights attaching to the securities to which the listing particulars relate.”

- (ii) If the Disclosure Document relates to securities issued in connection with a recommended take-over of the listed company and the directors of the other company accept responsibility for the information given on that company in the Disclosure Document, then the directors of the applicant may accept responsibility only for the rest of the information in the Disclosure Document and the responsibility statement must be adapted accordingly.
- (iii) The BSE may require responsibility to be extended to additional persons such as financial and legal advisors who have made specific statements in, or who have made contributions to, the Disclosure Document, in which case the statement must be adapted accordingly.
- (iv) The Disclosure Document must be signed by every director of the applicant (or by his agent or attorney, with a copy of the authority of any such agent or attorney); provided that where responsibility for any information contained in different parts of the Disclosure Document has been extended to or accepted by any other person in accordance with paragraph (a) (ii) and (iii), such other person (or his agent or attorney) shall also sign the Disclosure Document and it shall be stated clearly for which part or parts of the Disclosure Document each signatory bears responsibility.

**(b) Information about the issuer and its advisers**

- (i) A statement that BSE assumes no responsibility for the correctness of any of the statements or opinions made or reports contained in the Disclosure Document. Admission to the Official List is not to be taken as an indication of the merits of the issuer or of the securities;
- (ii) "An opinion of the board, with the concurrence of the audit committee on the adequacy of the internal controls, addressing financial, operational and compliance risks.
- (iii) The names and addresses of the issuer's sponsoring broker/sponsor, and any other expert to whom a statement or report included in the Listing Particulars has been attributed.
- (iv) The names, addresses and professional qualifications of the auditors who have audited the issuer's annual accounts in accordance with ISA for the last three financial years and for the period ending not more than 6 months from the proposed date of listing.
- (v) The provisions or a sufficient summary of the provisions of the Constitution or equivalent document with regard to:
  - 1. any power enabling a director to vote on a proposal, arrangement or contract in which he is significantly interested;

2. any power enabling the directors to vote on remuneration (including Pension or other benefits) to themselves or any members of their body and any other provision as to the remuneration of the directors;
  3. borrowing powers exercisable by the directors and how such borrowing powers can be varied;
  4. The company's dividend policy
  5. retirement or non-retirement of directors under an age limit;
  6. directors' qualification shares;
- (vi) that the securities of the company are freely transferable
- (vii) that the securities of the company shall be issued and allocated to all beneficiaries in electronic form
- (viii) changes in capital;
- (ix) any time limit after which entitlement to dividend lapses and an indication of the party in whose favour the lapse operates; and
- (x) arrangements for transfer of the securities and, where permitted restrictions on the free transferability.
- (xi) Where the Disclosure Document includes a statement purporting to be made by an expert, a statement:
1. specifying the qualifications of such expert and whether such expert has any shareholding in any member of the group or the right (whether legally enforceable or not) to subscribe for or to nominate persons to subscribe for securities in any member of the group, and, if so, a full description thereof;
  2. that the expert has given and has not withdrawn his written consent to the issue of the Disclosure Document with the expert's statement included in the form and context in which it is included; and
  3. of the date on which the expert's statement was made and whether or not it was made by the expert for incorporation in the Disclosure Document.
- (xii) Other securities exchanges (if any) where admission to listing is being or will be sought and the name of the securities exchanges (if any) on which securities of the same class are already listed.
- (xiii) Particulars of any commissions, discounts, brokerages or other special terms granted within the two (2) years immediately preceding the issue of the Disclosure Document in connection with the issue or sale of any capital of any member of the group, together with the names of any directors or proposed directors, promoters or experts (as named in the Disclosure Document) who received any such payment or benefit and the amount or rate of the payment or benefit they received, or an appropriate negative statement.

**(c) Information about the securities for which listing is sought and the terms and conditions of their issue and distribution**

- (i) If securities have been issued over the past one year the details of such issue, such price and names of such parties to whom such securities have been issued.
- (ii) A summary of rights attaching to the securities for which application is made, and in particular the extent of the rights as regards voting, entitlement to share in dividend and capital distributions, redemptions, the creation or issue of further securities ranking in priority to or pari passu with the class of securities for which listing is sought, any other special rights and a summary of the consents necessary for the variation of any of such rights. Where there is more than one class of securities of an issuer in issue (or application for listing has been made in respect of securities not identical with those already listed), like details must be given for each class.
- (iii) So far as is appropriate, concerning the terms and conditions of the issue of the securities in respect of which the application for listing is made:
  - 1. the basis for allotment of securities in the event of over subscription;
  - 2. the methods of payment of the issue or offer price, particularly as regards the paying-up of securities which are not fully paid;
  - 3. the procedure for the exercise of any right of pre-emption and the transferability of subscription rights;
  - 4. details of arrangements in the Subscription Form for the direct crediting of securities into the investors' CSD accounts.
  - 5. the names, addresses and description of the persons underwriting the issue for the issuer and, where not all the issue is underwritten, a statement by the directors of the manner in which, and the sources from which, any shortfall in the amount proposed to be raised by the offer is to be financed.
  - 6. in the case of an offer for sale of securities, the names, addresses and descriptions of the vendor(s) of the securities or, if there are more than 10 vendor(s), such details of the 10 principal vendors and a statement of the number of other vendors and particulars of any beneficial interest possessed by any director of the issuer in any securities so offered for sale; and
  - 7. the method of listing.
- (iv) The date on which dealings in the securities are expected to commence.

- (v) The amount or estimated amount of expenses of the issue and of the application for listing payable by the issuer.
- (vi) In the case of an issue of new equity securities, details of the intended use of the proceeds of the issue. Directors of the company must ensure that they update shareholders on the use of the proceeds and any variances from the planned use for such proceeds, in the annual report following the issue.

**(d) Information about the issuer's capital**

- (i) Where an issuer intends to increase its capital, an indication of:
  - 1. the amount to be increased;
  - 2. the categories of persons having preferential subscription rights for such additional proportions of capital; and
  - 3. the terms and arrangements for the share issue corresponding to such portions.
- (ii) The amount of any outstanding convertible debt securities and particulars of the conditions governing and the procedures for conversion, exchange or subscription of such securities.

**(e) Information about the company's activities**

- (i) Where a significant proportion of the group's assets are situated outside Botswana, a statement giving the best practicable indication of the amount and situation of such assets and the amount of the assets situated in Botswana.
- (ii) If the issuer is a member of a group, a brief description of that group covering the issuer's position within that group and, if a subsidiary, the names of and the number of shares held (directly or indirectly) by each holding company of the issuer.
- (iii) Particulars of any trademarks, patents or other intellectual or industrial property rights which are significant in relation to the group's business and, where such factors are of fundamental importance to the group's business or profitability, a statement regarding the extent to which the group is dependent on such factors.
- (iv) Particulars of any interruptions in the business of the group which may have or have had a significant effect on the financial performance and/or financial position in the last 12 months.
- (v) The number of people employed by the group and changes therein in the last financial year (if such changes are significant in the context of the group), with, if possible, a breakdown of persons employed by main categories of activity.
- (vi) In regard to the group, particulars of the location, size and tenure of its principal establishments (any establishment which accounts for more than 10 per cent of net turnover or production shall be considered a principal establishment).



- (vii) A statement that no change in the nature of the business is in contemplation.
- (viii) Particulars of any restriction affecting the remittance of profits or repatriation of capital into Botswana from outside Botswana, if applicable.

**(f) Information about the financial position of the company and its prospects**

- (i) Historical financial information as detailed in Section 4.2(g) and, if applicable, an accountant's report as set out in Section 4.2(p), on the applicant.
- (ii) Where more than six months have elapsed since the end of the financial year to which the last published annual accounts relate, an interim audited financial statement covering at least the first six months following the end of that financial year must be included in or appended to the Disclosure Document.

If such an interim financial statement is unaudited, the interim financial statements must be subject to a review by the auditors and that fact must be stated.

- (iii) Where an issuer prepares consolidated annual accounts, the interim financial statement must either be a consolidated statement or include a statement that, in the opinion of the issuer's directors, the interim financial statement enables investors to make an informed assessment of the results and activities of the group for the period.
- (iv) General information on the trend of the group's business since the date to which the latest audited accounts of the issuer were made up;
- (v) a statement as to the financial and trading prospects of the group for at least the current financial year, together with any information which may be relevant thereto, including all special trade factors or risks (if any) not mentioned elsewhere in the Disclosure Document and which are unlikely to be known or anticipated by the general public, and which could significantly affect the profits.
- (vi) A statement by the directors of the issuer that in their opinion the working capital available to the group is sufficient for the group's present requirements, that is, for at least the next twelve months from the date of issue of the Disclosure Document or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.
- (vii) A statement by the directors of the issuer of any significant adverse change in the financial or trading position of the group since the last audited accounts or any later interim statement have been published, or an appropriate negative statement.
- (viii) Confirmation that the financial statements have been prepared in conformity with International Financial Reporting Standards.

- (ix) Information on any legal or arbitration proceedings (including such proceedings which are threatened of which the issuer is aware) which may have or have had in the recent past (covering at least the previous 12 months) a significant effect on the group's financial performance and/or financial position or an appropriate negative statement.

**(g) Reporting of historical financial information**

Financial information shall be prepared in accordance with IFRS and other standards if any that may be prescribed by BAOA.

- (i) The historical financial information report of an applicant is the responsibility of its directors and this fact is to be stated in the report.
- (ii) Circumstances when a report of historical financial information is required
  1. on a new applicant (including an issuer making application in terms of a reverse take-over) making an application for listing and issuing a Disclosure Document;
  2. on the subject of any significant acquisition or disposal (measured against the anticipated market capitalization of the new applicant at the date of listing) that has been effected by a new applicant in the current or preceding financial year;
  3. on the subject of any significant acquisition or disposal (measured against the anticipated market capitalization of the new applicant at the date of listing) that is planned to be effected by a new applicant and is known at the date of issue of the Disclosure Document;
  4. on an existing listed issuer that is issuing a Disclosure Document;
  5. on the subject of a Category 1 transaction ;
- (iii) The report of historical financial information should include the following historical financial information:
  1. statements of comprehensive income;
  2. statements of financial position;
  3. statements of changes in equity;
  4. statements of cash flows;
  5. accounting policies;
  6. notes thereto;
  7. Segmental information.
- (iv) The historical financial information required under paragraph 4.2(g)(iii), is to be presented in consolidated form in respect of a period of at least three years up to and including the financial year immediately preceding the issue of the Disclosure Document/circular.

Where the historical financial information is not available for the prior three-year period, the BSE must be consulted for a ruling regarding disclosure and approval of the transaction.

If the historical financial information required under paragraph 4.2(g)(ii) was not historically prepared in terms of IFRS, such financial information has to be converted into IFRS.

The same historical financial information is also to be presented for the holding company.

- (v) Where the new applicant/issuer has made a significant acquisition/disposal, has entered into any other significant transaction or has entered into an agreement to make such a significant acquisition/disposal or other significant transaction subsequent to the last audited annual financial statements, and which has not been reported upon in any circular or other document, disclosure is to be made of all the terms and conditions of the relevant agreement, including any conditions precedent.
- (vi) In addition to the historical financial information required to be presented in accordance with paragraph 4.2(g)(iii), the latest financial statements included in the Disclosure Document should not be more than six(6) months old at the point of application. In the event the audited financial statements are more than six (6) months old, audited or reviewed interim financial information should be included in the Disclosure Document.
- (h) In the case of a company domiciled outside the Republic of Botswana, where the historical financial information required by paragraphs 4.2(g)(iii) to 4.2(g)(vii) has not been prepared in compliance with IFRS and the Act, there is to be disclosure of the following:
  - (i) the reasons for such non-compliance;
  - (ii) the accounting standards and legislation under which the historical financial information has been prepared; and
  - (iii) a comprehensive reconciliation to IFRS of the effect of such noncompliance on the information required to be presented.
- (i) The following additional information is to be provided when presenting the historical financial information required by paragraph 4.2(g)(iii) for the latest financial year, and, where applicable, for the interim period:
  - (i) any major change in the nature of property, plant and equipment and any change in policy regarding the use thereof;
  - (ii) details of any significant loan receivable (“loan”), including:
    1. the inception date of the loan;
    2. to whom the loan was made;

3. interest and repayment terms of the loan;
  4. if interest payments are in arrears, the last date on which interest was paid and the extent of the arrears;
  5. the period of the loan;
  6. the nature and value of any security held in respect of the loan;
  7. if the loan is unsecured, the reasons therefore;
  8. any changes in 4.2(i)(ii)2. to 7. above during the period; and
  9. how each loan arose, particularly whether it arose from the sale of assets by the issuer or any of its subsidiaries;
- (iii) details, as required in 4.2(i)(ii) above, of loans made or security furnished by the issuer or by any of its subsidiaries, for the benefit of any director or manager, or any associate of any director or manager;
- (iv) details of any significant borrowings (“borrowings”), including debentures and similar securities/instruments, stating:
1. the names of the lenders;
  2. the nature and value of security provided, if any, in respect of the borrowings;
  3. interest and repayment terms of the borrowings;
  4. if borrowings are repayable within 12 months, how the payments are to be financed; and
  5. how the borrowings arose, stating whether or not they arose from the purchase of assets;
- (v) the aggregate amounts and particulars of any shares and convertible securities issued, setting out the circumstances and purposes of the issues;
- (vi) details of any schemes involving the staff of the issuer or its subsidiaries in respect of each:
1. subsidiary, and any entity that was a subsidiary during the period covered by the report of historical financial information but which has ceased to be one;
  2. joint venture;
  3. partnership;
  4. associate; and/or
  5. other long-term investment;

If significant to the financial position, changes in equity, results or cash flows of the issuer, disclose the following:

- the amount of all classes of issued share capital, the percentage held by the issuer, its subsidiaries or nominees, the voting percentage held, if different from the ownership percentage, and any changes therein during the current and /or last financial period;
- any rights held by any person enabling such person to vary the voting rights held in any subsidiary; and

- the amount of the issuer's interest, distinguishing between shares and indebtedness, and any changes therein during the period;
  - (vii) the issuer's share of net profits and /or losses for the period of subsidiaries, joint ventures, partnerships and associates, disclosed separately for each such entity;
    1. particulars of directors' remuneration and benefits paid or accrued by the company;
    2. the net asset value and tangible net asset value per share, expressed in Pula;
  - (viii) earnings, headline earnings, diluted headline earnings and dividends per share in respect of each class of share, expressed in Pula;
  - (ix) any change in the nature of the business of the issuer and its subsidiaries;
  - (x) any significant fact or circumstance that has occurred between the end of the latest financial year of the issuer and the date of the Disclosure Document/circular, in so far as not already dealt with in the interim financial information included in the report of historical financial information or, where not applicable, an appropriate negative statement.
- (j) The report of historical financial information is to include commentary on the historical financial information incorporating a general review of the business and operations of the issuer/undertaking the subject of the transaction during the period and the results thereof and is to deal with every fact or circumstance significant to an appreciation of the state of affairs, financial position, changes in equity, results of operations and cash flows of the issuer.
- (k) Where the financial year-end of the issuer changed at any time during the reporting periods, the historical financial information for the full periods in question is to be provided. Annualized historical financial information is not to be presented in the report of historical financial information.
- (l) A statement of adjustments is to be provided, detailing the amounts and reasons therefore, in respect of any adjustments made to previously reported historical financial information used in preparing the report of historical financial information. This is to be provided in the form of reconciliation between the previously reported historical financial information and the adjusted historical financial information presented in the report of historical financial information. If no adjustments are made, there is to be disclosure of that fact.

Adjustments are only to be made to give effect to:

- (i) retrospective application of changes in accounting policies; and
- (ii) retrospective correction of fundamental errors.

### **(m) Pro forma financial information**

If the issuer publishes pro forma financial information, including but not limited to financial effects, in any document requiring submission to the BSE, that information must comply with paragraphs 4.2(k)(i) to 4.2(l)(xiii) and a reporting accountant's report must be included in the relevant document.

In all instances, the pro forma financial information must be compiled in terms of the Listings Requirements and IFRS.

- (i) Pro forma financial information is the responsibility of the directors of the issuer and this fact is to be stated with the pro forma financial information.
- (ii) Pro forma financial information is to provide investors with information about the impact of the corporate action the subject of the Disclosure Document/circular, by illustrating how that corporate action might affect the reported financial information, had the corporate action been undertaken at the commencement of the period being reported on, or in the case of a pro forma balance sheet, at the date reported on.

The pro forma financial information presented is not to be misleading, is to assist investors in analysing future prospects of the issuer and is to include all appropriate adjustments permitted by paragraph 4.2(l)(ix), of which the issuer is aware, and which are considered necessary to give effect to the corporate action as if the corporate action had been undertaken at the commencement of the period being reported on or, in the case of the pro forma balance sheet, at the date reported on.

- (iii) The pro forma financial information is to state clearly:
  - 1. the purpose for which it has been prepared;
  - 2. that it is prepared for illustrative purposes only; and
  - 3. that because of its nature, it may not fairly present the issuer's financial position, changes in equity, results of operations or cash flows.
- (iv) The pro forma financial information is to be presented in columnar form showing separately the unadjusted financial information, the pro forma adjustments and the pro forma financial information. The pro forma financial information is to identify:
  - 1. the basis upon which it is prepared; and
  - 2. the source of each item of information and adjustment.
- (v) Pro forma figures must be given no greater prominence in the document than unadjusted financial figures.

- (n) Pro forma financial information is to be presented in a manner consistent with both the format and accounting policies adopted by the issuer in its report of historical financial information.
- (i) In quantifying pro forma adjustments, the issuer is to apply accounting policies on the same basis as the issuer would normally adopt in preparing its annual financial statements.
  - (ii) The requirement to apply the issuer's accounting policies in preparing pro forma financial information applies to adjustments made in respect of a significant acquisition.
  - (iii) Pro forma financial information is to be prepared in accordance with the policies adopted in presenting the unadjusted financial information of the issuer at the relevant date or for the relevant period, even where new accounting standards will apply subsequently.
  - (iv) Pro forma financial information may be published only in respect of:
    1. the most recent completed financial period;
    2. the most recent interim period for which unadjusted information has been published or is being published in the report of historical financial information;
    3. both 4.2(m)(iv)1. and 2.;
    4. in the case of a pro forma balance sheet, as at the date on which such periods end or ended; and
    5. a profit forecast (provided the forecast has been published and reported on in terms of Section 4.2(n) for income statement purposes and paragraphs 4.2(m)(iv)1. to 4. for balance sheet purposes.
  - (v) No adjustments may be made to pro forma financial information in respect of post balance sheet events except:
    1. as provided for in IFRS on Events After the Balance Sheet Date; or
    2. in respect of the particular corporate action for which the pro forma financial information is being presented; or
    3. in respect of any previously published financial effects; or
    4. in respect of any post balance sheet corporate action of the issuer or the target, where it would be misleading not to make an adjustment, and in such instance, in addition to providing full details of the adjustment, details must be provided as to why the issuer believes it would be misleading not to make an adjustment.
  - (vi) Where a pro forma income statement or cash flow statement is presented for two or more entities or business undertakings, such as may be the case in a significant acquisition, the unadjusted information about the issuer and the adjustments in respect of the

other entity or entities are to cover similar periods of the same length.

- (vii) The unadjusted information of the issuer is to be derived from the most recent:
1. published audited annual financial statements, published interim report, preliminary reports or provisional reports;
  2. previously published report of historical financial information;
  3. previously published pro forma financial information;
  4. profit forecast which has been published and reported on in terms of Section 4.2(o), for income statement purposes, and paragraphs 4.2(n)(vii)1. to 3., for balance sheet purposes.
- (viii) The unadjusted information of the subject matter of the acquisition or disposal is to be derived from the:
1. most recent published audited annual financial statements, published interim report, preliminary report or provisional report;
  2. profit forecast which has been issued and reported on in terms of 4.2(o) for income statement purposes and paragraphs 4.2(n)(viii)1. or 3. for balance sheet purposes;
  3. Unpublished management accounts provided that:
    - the issuer is satisfied with the quality of those management accounts and a statement is included in the announcement confirming this;
    - shareholders are warned about the source of the information; and
    - in the case of a circular to shareholders where the circular either includes those management accounts and/or uses them for the purposes of the pro forma financial effects, a reporting accountant's review or audit opinion (whichever is applicable) must be obtained on those management accounts.
- (ix) Any adjustments that are made to the information referred to in paragraphs 4.2(n)(vii) and 4.2(n)(viii) above in relation to any pro forma statement are to be:
1. clearly shown and explained;
  2. directly attributable to the transaction concerned and not relating to future events or decisions;
  3. factually supportable; and
  4. in respect of a pro forma income statement or cash flow statement, clearly identified as those adjustments that are expected to have a continuing effect on the issuer and those that are not.



- (x) In order to comply fully with paragraph 4.2(n)(ix), issuers must include notes to the pro forma financial information providing the explanations required in terms of paragraph 4.2(n)(ix) as well as:
  1. any assumptions and justification of such assumptions on which the adjustments are based;
  2. where relevant, how adjustments have been aggregated or allocated to financial statement captions.
- (xi) In respect of pro forma income or cash flow statements, issuers are to identify clearly those adjustments that are expected to have a continuing effect on the issuer and those that are not. An issuer is not permitted either:
  1. to omit adjustments that are directly attributable to a corporate action and are factually supportable, on the grounds that they do not have a continuing effect; or
  2. to make adjustments to eliminate items solely on the grounds that they are considered not to have a continuing effect.
- (xii) Where pro forma earnings and headline earnings per share information is given for a transaction, it must be provided in compliance with IFRS.
- (xiii) Issuers are to interpret paragraphs 4.2(n)(vii) and 4.2(n)(viii) in line with the requirements of IFRS and the relevant guidelines issued by BICA from time to time.

**(o) Profit forecasts and estimates**

The following requirements apply equally to forecasts or estimates of profits or losses, cash flows or net asset values (collectively defined as “profits or losses”) of an issuer or an undertaking/acquisition that is or will become a significant part of an issuer’s group.

- (i) Any statement or information relating to the future prospects of an issuer, or an undertaking that is or will become a significant part of an issuer’s group, must be clear and unambiguous.

The issuer must determine in advance with its advisers, whether such a statement of information will constitute a profit forecast or an estimate. Any profit forecast or estimate must be compiled using accounting policies applied by the issuer.

1. A specific profit forecast is a form of words which expressly states a figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for profits or losses may be made.

A specific profit forecast is usually made when an issuer includes a number, percentage, range or refers to “real” or any other term that has a recognized value. This list is not exhaustive and issuers must consult with their sponsors to ascertain whether a statement constitutes a specific forecast.

2. A general profit forecast is a form of words which, by implication, indicates a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which such calculation may be made, even if no particular figure is mentioned and the word “profit” is not used.

A general profit forecast is usually made when an issuer uses the following words or terms: improvement, increase, growth, decline, decrease, similar or in line with. The use of these words or terms must not result in the statement becoming a specific profit forecast. This list is not exhaustive and issuers must consult with their sponsors to ascertain whether a statement is a general forecast.

3. A profit estimate bears the same meaning as a general or specific forecast, with the exception that it relates to a financial period ended but for which no financial information has yet been published.
4. When an issuer clearly states in an announcement that it has certain future targets or objectives that it would like to achieve, such will not be interpreted as a profit forecast or estimate as referred to above, provided that the targets or objectives do not specifically relate to the current or next reporting period.

- (ii) A specific or general profit forecast or estimate of an issuer or an undertaking that is or will become a significant part of the issuer’s group which is included in any communication with shareholders is the sole responsibility of the directors and must:

1. include the key assumptions and/or bases that have been used in arriving at the forecast or estimate;
2. make reference to the relevant previously published information (line item/s in the statement of comprehensive income, statement of financial position or the statement of cash flows ) to which it relates; and

- (iii) A dividend forecast must be treated as a profit forecast where the issuer has a known policy of relating dividends to earnings, or has an insufficient level of retained earnings, or the forecast otherwise

implies a forecast of profit. In the event of uncertainty the BSE must be consulted.

- (iv) In the event of an issuer publishing a specific or general profit forecast or estimate in an announcement, it must either:
1. produce and submit to the BSE a profit forecast or estimate and a corporate finance adviser's report thereon in accordance with the relevant accounting reporting standards; or
  2. include a statement (which is not deemed to be a cautionary statement and which does not give rise to the commencement of a closed period) in the announcement advising securities holders that the forecast financial information has not been reviewed and reported on by a corporate finance adviser in accordance with 4.2(o)(iv)1.
- (v) The BSE reserves the right to insist on sign-off by the corporate finance adviser in accordance with paragraph 4.2(o)(iv)1., where it believes that it would be in the interests of securities holders.
- (vi) The period of the forecast or estimate should normally be to the end of the financial period. If it is not, then the period of the forecast or estimate must be in respect of a period for which the results will be published.
- (vii) A profit forecast or estimate included in a Disclosure Document/circular must;
1. be prepared in accordance with IFRS for that forecast period,
  2. be reported on by a corporate finance adviser in accordance with paragraph 4.2(o)(iv)1. And
  3. include a statement of the principal assumptions for each factor that would have an effect on the achievement of the forecast or estimate. These assumptions must:
    - be clearly segregated between assumptions about factors that the directors can influence and assumptions about factors that are exclusively outside the influence of the directors;
    - be readily understandable by investors; and
    - be specific about the particular aspect of the estimate/forecast to which they refer and about the uncertainty attaching to that aspect;
    - be subjected to a sensitivity analysis.
- (viii) Where a listed company publishes a forecast and/or estimate, the directors of the company must ensure that they comment on whether the forecast/estimate was achieved or not and disclose the scale of

such variance if any and the reasons for the variance if applicable when releasing the next interim or annual financial statements.

**(p) The Accountant's Report**

The reporting accountant's report, signed off by an independent reporting accountant, is required when:

- (i) a report of historical financial information is required in terms of paragraph 4.2(g)(ii)1.,2.,3.,5 and 6.;
- (ii) a report of historical financial information is prepared and presented on a voluntary basis (except when it relates to previously published information of the issuer);
- (iii) pro forma financial effects or pro forma financial statements are prepared (except when that pro forma information only appears in an announcement);

**(q) Contents of the Accountant's Report**

A reporting accountant's report must be based on work performed in accordance with the relevant standards issued by the IAASB, and should be addressed to the directors of the applicant, in the case of an application for listing of new securities, or the listed company, in the case of an acquisition or disposal, and each report must include the following basic elements, ordinarily in the following layout:

- (r) The reporting accountant's report(s) should be dated on the same day that the directors authorize the issue of the Disclosure Document/ circular/ announcement for formal submission to the BSE.
- (s) The reporting accountant should review the Disclosure Document/circular to ensure that the contents thereof are not contradictory with the information contained in the report of historical financial information. The reporting accountant must inform the BSE, in writing, of its consent for inclusion and of any such contradictions. The consent letter should be dated on the same day that the directors authorize the issue of the Disclosure Document/circular for formal submission to the BSE.
- (t) The reporting accountant should submit a letter to the directors giving his/her consent to the inclusion of:
  - (i) the reporting accountant's report(s) in the Disclosure Document/circular; and
  - (ii) references to, or extracts from, the reporting accountant's report(s) included in the Disclosure Document/circular.
- (u) A statement is to be included in the Disclosure Document/circular that the reporting accountant has given and has not withdrawn its written consent to the issue of the Disclosure Document/circular, containing the reporting accountant's report in the form and context in which it appears.

**(v) Information about the issuer's Directors, Management and major Shareholders**

- (i) If different from the registered office, the address of the premises at which the statutory records of the issuer are kept, and where the issuer is an overseas company, the address of its registered office in Botswana or such other place in Botswana where its branch share register is located, if applicable.
- (ii) Insofar as is known to the issuer, a statement showing the name of each person, other than a director or chief executive of the issuer, who is directly or indirectly interested in 5 per cent or more of the number of shares of any class of share capital carrying rights to vote in all circumstances at the meeting of shareholders of the issuer and the amount of each person's interest in such securities, or, if there are no such interests, an appropriate negative statement.
- (iii) An estimate of the aggregate remuneration payable to, and benefits in kind receivable by, the directors or any proposed directors of the issuer by any member of the group in respect of the current financial year under the arrangements in force at the date of the Disclosure Document.
- (iv) Full particulars of any contract or arrangement subsisting at the date of the Disclosure Document in which a director of the issuer is interested, or an appropriate negative statement.
- (v) The total of any outstanding loans by any member of the group to the directors and also of any guarantees provided by any member of the group for their benefit.
- (vi) Details of any schemes involving the staff (including executives and/or employees) in the capital of any member of the group.
- (vii) Particulars of any arrangement under which a director of the issuer has waived or agreed to waive future emoluments together with particulars of waivers of such emoluments which occurred during the past financial year.
- (viii) The full name and, if relevant, any former name, business address and function in the group of each of the following persons and an indication of the principal activities performed by them, including any activities performed outside the group where such activities are related to the group:
  1. directors of the issuer and its major subsidiaries;
  2. founders, if the issuer has been established for fewer than five years;
  3. Any shareholder who holds shares in excess of 10%; and
  4. in the case of the applicant and its major subsidiaries, members of management forming part of the applicant's, or applicant's subsidiaries', executive and/or management committees responsible for the day to day running of the applicant group's business.
- (ix) In the case of each person described in paragraph 4.2(v)(viii)1. and 4., details of that person's relevant management expertise and experience and the following information:

1. full names;
2. occupation and/or function, including whether in an executive or non-executive capacity, for example; non-executive chairman, executive chairman, chief executive officer, managing director, financial director, other relevant executive and non-executive director functions/status and the executive functions of all managers specified;
3. business address;
4. nationality;
5. the names of all companies and partnerships of which such person has been a director or partner at any time in the previous five years, indicating whether or not the individual is still a director or partner. It is not necessary to list all the subsidiaries of a company of which the person is also director;
6. details of any bankruptcies, insolvencies or individual voluntary compromise arrangements of such person;
7. details of any business rescue plans and/or resolution proposed by any entity to commence business rescue proceedings, application having been made for any entity to begin business rescue proceedings, notices having been delivered in terms of the Act, receiverships, compulsory liquidations, creditors' voluntary liquidations, administrations, company voluntary arrangements or any compromise or arrangement with creditors generally or any class of creditors of any company; where such person is or was a director, with an executive function within such company at the time of, or within the 12 months preceding, any such event(s);
8. details of any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships where such person is or was a partner at the time of or within the 12 months preceding such event(s);
9. details of receiverships of any asset(s) of such person or of a partnership of which the person is or was a partner at the time of, or within the 12 months preceding, such event;
10. details of any public criticisms of such person by statutory or regulatory authorities, including recognised professional bodies, and whether such person has ever been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company;
11. details of any offence involving dishonesty committed by such person; details regarding such person's removal from an office of trust, on the grounds of misconduct and involving dishonesty; and
12. details of any court order declaring such person delinquent or placing him under probation or disqualifying him to act as a director in terms of the Companies Act

- (x) If not already stated, details of the information contained in the director's personal declaration (**Appendix4A**) which is to be completed by each Director of a listed company and submitted to the BSE every five (3) years, or subsequent to any material change.
- (xi) In the case of a foreign applicant, information, similar to that described in Sections 4.2(v)(viii) and (ix), relative to the local (Botswana ) executive management committee, if any. Where the BSE considers that the parent company is not adequately represented on the directorate of its Botswana or foreign subsidiaries, an appropriate explanation is required.
- (xii) The term of office for which any director has been or is to be appointed, the manner in and terms on which any proposed director will be appointed and particulars of any right held by any person (usually a contractual right given to a shareholder, provider of capital or other person/entity in terms of an agreement between such person/entity and the company) relating to the appointment of any particular director or number of directors.

**(w) Contracts and documents for inspection**

The following documents (or copies thereof) where applicable, relating to the applicant and its subsidiary companies, if any, must be able to be inspected at a place where the applicant has its registered office, and in Botswana for a reasonable time (corresponding to the number of days the issue remains open):

- (i) the Constitution of the applicant;
- (ii) any trust deed of the applicant or any of its subsidiaries;
- (iii) all significant contracts referred to in the Disclosure Document as per the latest audited/reviewed Financial Statements or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (iv) all reports, letters or other documents, balance sheets, valuations and statements by any expert any part of which is extracted or referred to in the Listing Particulars;
- (v) the annual financial statements since the incorporation of the applicant or for the preceding five years, whichever is the lesser, together with all notes, certificates, or information required by the Companies Act; and
- (vi) Any other document which, in the opinion of the BSE, is necessary to give investors full information on the issuer.

**(x) Shareholder approval**

If the issue of securities in respect of which the Disclosure Document is to be issued is made conditional upon shareholder approval the following statement must appear on the first page of the document:

"This Disclosure Document has been prepared on the assumption that the ordinary and special resolutions proposed in the Notice of General Meeting forming part of the circular to which the Disclosure Document is attached will be passed at the General Meeting of shareholders to be held on ..... and registered (if applicable)."

### **4.3 Additional Contents for Offers to the Public**

When a company applies for listing of its securities through an offer to the public as defined in the Companies Act, it must publish a Prospectus as defined by the Companies Act. Issuers should comply with the provisions of the Companies Act, disclosure requirements set out in Section 4.2 and a statement must appear prominently on the cover page of the Prospectus that;

"An application has been made to BSE for permission to list all the securities of the issuer already issued as well as those securities which are the subject of this issue. Such permission will be granted when the issuer has been admitted to the Official List. Acceptance of applications will be conditional upon issue of the securities and upon permission being granted to list all the issued securities of the issuer. Monies paid in respect of any application accepted will be returned if the said permission is not granted."

### **4.4 Additional Contents for Rights Offers**

Where the securities for which listing is sought are offered by way of rights to the holders of existing listed securities, the Disclosure Document should comply with the disclosure requirements set out in Section 4.2, the Companies Act and the following additional requirements:

- (a) The purpose of the rights issue and the use of proceeds. Directors of the company must ensure that they update shareholders on the use of the proceeds in the next year end financial statements announcement commentary;
- (b) The date of the General Meeting to approve the Rights issue. The General meeting shall be held within a period of 24 calendar days from the date of approval;
- (c) The price and ratio for the allotment of rights;
- (d) The ex-rights date (the date of provisional allotment);
- (e) The period in which the rights (provisional allotment) can be traded;
- (f) Final date for payment on account of the rights issue including instructions regarding payment;
- (g) Date on which rights will be converted into shares;
- (h) how securities not taken up will be dealt with and the time, not being



less than 21 days or such other time period as may be acceptable to the BSE, in which the offer may be accepted;

- (i) the pro rata entitlement;
- (j) the last date on which transfers were or will be accepted for registration for participation in the issue;
- (k) how the securities rank for dividend, whether the securities rank *pari passu* with any listed securities;
- (l) how fractions (if any) are to be treated;
- (m) whether the board of directors has received any information from any shareholders who own more than 10% of the issued shares of their intention to take up securities provisionally allotted or offered to them or to be provisionally allotted to them and the particulars thereof;
- (n) a statement estimating the total amount of funds to be raised through the issue; and
- (o) a table of the aggregate volumes traded and the highest and lowest prices traded in the securities for each month over the twelve months prior to the date of issue of the Disclosure Document; for each quarter over the previous two years; and for each day over the 30 days preceding the last practicable date prior to the date of issue of the Disclosure Document.

#### **4.5 Additional contents for Scrip Issue and Capitalisation (Bonus) Issues**

Issuers should comply with the disclosure requirements set out in Section 4.2 and the following additional requirements:

- (a) The declaration of the scrip issue
- (b) The date of the General Meeting to approve the scrip issue. The General meeting shall be held within a period of 24 calendar days from the date of approval.
- (c) The basis of distributing the scrip issue
- (d) The ex-bonus date (the date of allotment)
- (e) Whether or not it is renounceable and how fractions (if any) are to be treated.

#### **4.6 Additional contents of Disclosure Documents where the Offer increases the Securities issued by more than 25%**

Where an issue of securities (including a rights issue) which, together with any securities of the same class issued in the previous 3 months, would increase the securities issued by more than 25% (for this purpose a series of issues in connection with a single transaction, or series of transactions that is regarded by the BSE as a single transaction, will be deemed to be a single issue) the disclosure requirements set out in Section 4.2 shall apply.

#### **4.7 Additional requirements for Venture Capital Board**

On the front page of the Disclosure Document there must be a warning, in bold, block letters, of the speculative nature of investment in such companies;

#### **4.8 BSE approval**

Disclosure Documents must be formally approved by the BSE before publication. Such approval will only be given if the BSE considers that the information in the Disclosure Document is complete.

#### **4.9 Supplementary Disclosure Documents**

- (a) The BSE must be advised immediately after Disclosure Documents have been published and before dealings in the relevant securities commence, the applicant becomes aware that:
  - (i) there has been a change affecting any matter contained in the Disclosure Document; or
  - (ii) a new matter has arisen, the inclusion of information in respect of which would have been required to be mentioned in the Disclosure Documents if it had arisen at the time of their preparation.
- (b) The BSE shall determine the significance of the change or the new matter and whether it warrants publication of a supplementary disclosure document and the contents thereof.

#### **4.10 Omission of information**

- (a) If any information required by this Chapter is not applicable and no equivalent information is available, it need not be included in the Disclosure Document provided that the BSE is informed in writing of this and approves of such omission.
- (b) The BSE may authorise the omission of information which is applicable if it considers that:
  - (i) the information is of minor importance only and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the applicant.
  - (ii) disclosure would be contrary to the public interest and omission is not likely to mislead investors with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question; or
  - (iii) disclosure would detrimentally affect the information needs of the market, namely that the inclusion of the information would not be material to an investor's decision to invest and its inclusion would be likely to distort and mislead in relation to matters which are required to be disclosed; or
  - (iv) disclosure would be seriously detrimental to the applicant or would constitute an invasion of the applicants rights to privacy, and omission is not likely to mislead investors with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question.

- (c) Requests to the BSE to authorise any omission of information must:
  - (i) be in writing from the applicant submitted by the applicant's sponsoring broker, sponsor or, where appropriate, other adviser;
  - (ii) identify the information concerned and the reasons for the omission; and
  - (iii) state why, in the opinion of the applicant, one or more of the grounds in Section 4.10(b) applies.

#### **4.11 Issues not requiring Disclosure Documents**

- (a) Additional Disclosure Documents are not required for issues of securities by an applicant whose securities are already listed which fall into the following categories:
  - (i) securities resulting from the conversion of convertible securities;
  - (ii) securities resulting from the exercise of rights under options;
  - (iii) securities allotted to employees if securities of the same class are already listed;
  - (iv) where the issue relates to the extension of a business contemplated by and previously described in a Disclosure Document, the requirement to issue a Disclosure Document may be waived or the requirements reduced in the sole discretion of the BSE;
- (b) When a Disclosure Document is not required in terms of Section 4.11 (a) further information which the BSE may reasonably consider investors and their professional advisors to reasonably require for the purpose of making an informed assessment of the prospects and status of the applicant may be required to be announced and in some cases a circular to shareholders may be necessary. In this regard, applicants must consult with the BSE at an early stage to determine the BSE's requirements, if any.

#### **4.12 Publication/circulation of Disclosure Documents**

- (a) Disclosure Documents or supplementary Disclosure Documents must be published, in full on X-News and in an abridged form in at least one National newspaper.
- (b) Notwithstanding (a) above, and as applicable, the full Disclosure Document must be distributed to all shareholders.
- (c) Where the Disclosure Documents are revised or supplementary Disclosure Documents are prepared, they will normally be required to be published and circulated to shareholders at the time of despatch of the revised offer document. The BSE may, in properly justified cases, be prepared to allow pre-

listing statements to be published and circulated subsequent to the despatch of revised offer documents but before listing is granted.

**Appendix 4A**  
**Directors' personal declaration**

This director's personal declaration must be provided in letter format addressed to the BSE in accordance with the BSE's Listings Requirements.

**Personal details**

1. Applicant issuer and effective date of appointment:

.....

2. Surname of Director:

.....

3. Any former surname:

.....

4. First name:

.....

5. Identity number:

.....

6. Director function and capacity in the applicant company:

.....

7. Physical address:

.....

8. Postal address:

.....

9. Telephone number (business):

.....

10. Fax no.:

.....

11. E-mail address:

.....

**Qualifications and experience**

12. Are you a director, or alternate director of any other company that is publicly listed or traded, or a partner in any partnership? If so, state the name of any such company or partnership, the nature of business where this is not indicated in the title, and the date you became a director or partner.

.....

13. Provide details of your qualifications and relevant experience.

Qualifications: .....

.....

Experience: .....

.....

14. Have you ever been disqualified by a court from acting as a director of a company, or from acting in the management or conduct of the affairs of any company? If so, give full particulars.

.....

.....  
15. Are you being appointed as a director of an VCB company? If yes please confirm whether you have attended the VCB Directors Induction Workshop?  
.....  
.....

**Integrity**

16. Have you ever been convicted of any offence resulting from dishonesty, fraud, theft, forgery, perjury, misrepresentation or embezzlement? If yes, provide details.  
.....  
.....

17. Has any company been put into liquidation or been placed under business rescue proceedings or had an administrator or other executor appointed during the period when you were (or within the preceding 12 months had been) one of its directors, or alternate directors or equivalent position? If yes, provide details.  
.....  
.....

18. Have you ever been adjudged bankrupt or sequestrated in any jurisdiction? If yes, provide details.  
.....  
.....

19. Have you at any time been a party to a scheme of arrangement or made any other form of compromise with your creditors? If yes, provide details.  
.....  
.....

20. Have you ever been found guilty in disciplinary proceedings, by an employer or regulatory body, due to dishonest activities? If yes, provide details.  
.....  
.....

21. Have you ever been barred from entry into any profession or occupation? If yes, provide details.  
.....  
.....

22. Have you at any time or has a company of which you were a director or alternate director or officer at the time of the offence, been convicted in any jurisdiction of any criminal offence, or an offence under legislation relating to the Companies Act. All such convictions must be disclosed even though they may now be “spent convictions”.  
.....  
.....

23. Have you ever been removed from an office of trust, on the grounds of misconduct, involving dishonesty? If so, give full particulars.  
.....  
.....

24. Has any court granted an order declaring you to be delinquent or placing you under probation? If so, give full particulars.  
.....  
.....

I ..... director of (name of company)

.....  
.....  
.....  
("the issuer") declare that, to the best of my knowledge and belief (having taken all reasonable care to ensure that such is the case), the answers to all the above questions are true and I hereby give my authority to the BSE to disclose any of the foregoing particulars as the BSE may, in its absolute discretion think fit.

I also acknowledge that ..... of which I am a director has agreed to be bound by and to comply with the BSE's Listings Requirements, as amended from time to time, and, in my capacity as a director, I undertake and agree to discharge my duties in ensuring such compliance whilst I am a director. The delegation of any of my duties to any sub-committee or anyone else will not absolve me of my duties and responsibilities in terms of the Listings Requirements.

I further acknowledge that certain requirements contained in the BSE's Listings Requirements, as amended from time to time, affect me directly as a director and, in my personal capacity, as well as in my capacity as a director, I undertake to be bound by and to comply with all such requirements whilst I am a director.

.....  
Signature

.....  
Date

## CHAPTER 5 - Continuing Obligations

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### 5.1 Scope of Chapter

The fundamental principles of continuing obligations in the Listings Requirements are timely disclosure and transparency. The listed entity should provide all information that would be material to an investor's investment decision.

These principles are designed to protect investors by achieving an orderly market and ensuring that all investors have simultaneous access to the same relevant information.

Where there is an overlap between any requirements or dispensations that may be required by or granted in terms of any law, or by any statutory body or organ such as the Registrar of Companies, a listed company must, notwithstanding such other requirements or dispensations, nonetheless comply with these listings requirements.

### 5.2 Compliance with the Listings Requirements

- (a) Every listed company must designate one of their senior executives as the Compliance Officer for the purposes of the Listings Requirements. It is recommended that the Compliance Officer should also function as the Investor Relations Officer and thus the contact person between the investing public and the listed company. The BSE must be updated whenever there are changes to these positions.
- (b) The provisions of Sections 2.10 (f) and 2.11 (b) (iv) must be complied with on an on-going basis.
- (c) An issuer is required to have an appointed Sponsor, registered by the BSE in terms of Chapter 10, and all necessary correspondence pertaining to further issues and other continuing listing obligations must be communicated to the BSE through the Sponsor. Any potentially price sensitive communication must however be submitted directly to the BSE by the Compliance Officer.

#### (d) Annual revision of the List

In terms of Section 16(1)(d) of the BSE Act, a company's listing shall be reviewed by the Committee annually after receipt by the Listings Committee of a certificate from the listed company by not later than 28 February in each year. The certificate must be in the form of a letter addressed to the BSE and stating all matters of non-compliance vis-a-vis the listing during the previous 12 months as applicable. In the event the company has complied fully with all the requirements during the period in question, this fact must be stated.

### 5.3 General obligations of disclosure

- a) An issuer must without delay, announce any information known to the issuer concerning it or any of its subsidiaries or associate companies, including but not limited to information which:



- (i) is necessary to avoid the establishment of a false market in the issuer's securities; or
  - (ii) might reasonably be expected to significantly affect market activity and the price or value of its securities.
- b) Information that is required to be announced in terms of Section 5.3 (a) may not be released, even if subject to a time embargo, to any third party until such time as the information has been released to the market through the Exchange News (X-News) service (**Appendix 5A**).
  - c) All Press Announcements, Prospectuses, Prelisting Statements and Circulars (regulatory publications) must be published on X-News first prior to releasing the same in a newspaper and/or any other media or presentation. Abridged versions of Annual Financial Statements, Prospectuses and Prelisting Statements must, in addition to X-News, be published in at least one (1) national English language newspaper.
  - d) Interim Financial Statements should be published on X-News but need not be published in a newspaper.
  - e) In addition to being published as per Section 5.3(c), Circulars, Annual Reports and Notices of General Meetings must also be distributed to shareholders.

Listed companies are not required to send hard copies of the documents to be distributed provided that shareholders have elected not to receive such hard copies.

- f) Listed companies shall be liable to pay fees for publications of the regulatory publications on X-News as per the fee structure determined and published by the BSE from time to time.
- g) Notwithstanding the provisions of Section 5.3 (a), an issuer may give information in strict confidence to its advisers, sponsor and to persons with whom it is negotiating with a view to effecting a transaction or raising finance. In such cases, the issuer must advise the recipients of such information that it is confidential and that they should not deal in the issuer's securities before the information has been made available to the public.
- h) An issuer whose securities are listed on the BSE and on any other securities exchange must ensure that the same information is made available at the same time at both exchanges.
- i) Listed companies must take all reasonable care to ensure that any information they notify to the BSE and any other securities exchange is complete and not misleading, false or deceptive.

#### **5.4 Cautionary announcements**

- (a) An issuer must publish, by way of a cautionary announcement as soon as possible after it is in possession of any price sensitive information.
- (b) The following circumstances where disclosures can be withheld are limited and constitute an infrequent exception to the normal requirement of

immediate public disclosure. Thus in cases of doubt, the presumption must always be in favour of disclosure.

- (i) When immediate disclosure would prejudice the ability of the entity to pursue its corporate objectives.
- (ii) When the facts are in a state of flux and a more appropriate moment for disclosure is imminent.
- (iii) When the listed entity is holding negotiations and has not reached an agreement in principle.

Whenever the information is being temporarily withheld, the strictest confidentiality must be maintained, and the entity should be prepared to make an immediate public announcement if required by the Exchange.

If rumours concerning such information should develop, immediate public disclosure is required.

- (b) A profit warning must also be published in the form of a cautionary announcement, as soon as the company becomes aware that the expected profit or loss (before tax) of the company may differ from the previous reported figure for the corresponding immediate past period by 10% or more.
- (c) An issuer that has published a cautionary announcement must publish updates every 30 days.

## **5.5 Power to require information**

- a) The BSE may require a listed company to disclose to it within a period specified by it, such information at the company's disposal as the BSE may determine, and if the BSE is satisfied, after such company has had an opportunity of making representations to it, that the disclosure of that information to the registered holders of the securities in question will be in the public interest, the BSE may by notice in writing require such company to so disclose that information within the period specified in the notice.
- b) The BSE may require a listed company to provide for the publication or dissemination of any further information not specified in the listings requirements in such form and within such time limits as it considers appropriate. The listed company must comply with such requirement, and, if it fails to do so, the BSE may publish the information after having heard the representations of the listed company or after having granted the listed company the opportunity to make such representations.

## **5.6 Disclosure of periodic financial information**

### **(a) Interim financial statements**

A Listed Company shall publish on X- News Interim Financial Statements prepared on a half yearly basis and publish them within two (2) months from

the end of the period to which the Interim Financial Statements relate. Listed companies in sectors which the industry regulator mandates the provision of quarterly financial statements shall be required to publish the same in X-News at the same time the financial statements are submitted to the industry regulator.

**(b) Audited Financial Statements**

A listed company must publish on X-News a full version and in one (1) national newspaper the abridged version of its Audited Financial Statements within three (3) months of its financial year end. Publication on the newspaper must be done within a week of receiving confirmation of release on X-News.

**(c) Preliminary Financial Statements**

In the event a listed company has not published its Audited Financial Statements within the three(3) months of its financial year end, it must publish preliminary financial statements (even if the information is unaudited at that time) on X-News and the abridged version of its unaudited Financial Statements in one(1) national newspaper. The publication of Preliminary financial statements does not absolve the listed company from any sanctions that may be imposed by the BSE. The listed Company which has published a preliminary financial statement must publish Audited Financial Statements as soon as they are ready.

**5.7 Dividends**

a) A decision by the Board of an issuer to declare dividends should immediately be released through the BSE. This announcement released through the BSE must be made at least 14 days prior to the ex-div date and must contain the following minimum information:

- (a) Ex-dividend date
- (b) the date on which the dividend will be paid; and
- (c) the cash amount that will be paid for the dividend per share
- (d) In the event of a scrip dividend:
  - The number of shares to be issued
  - The proportion in which shares are to be issued
  - The consideration for which the shares are to be issued
  - The current stated capital of the Entity
  - The value of reserve/s to be capitalized for the issue of shares
  - The following statement:  
“The scrip dividend is subject to the Exchange approving in principle the issue and listing of shares and obtaining shareholder approval (if required in terms of the Constitution of the Company).”

b) When a listed company declares a dividend, the company must submit to the BSE a declaration by the board of directors that the company and its

subsidiaries have passed the solvency and liquidity test and that, since the test was performed, there have been no significant changes to the financial position of the group.

- c) The issuer shall publish a notice to shareholders on X-News at least fourteen days (14) prior to the Ex-dividend date.
- d) Payment of dividends must be effected within fourteen (14) calendar days after the Ex-dividend date.
- e) Where a dividend declaration is expressed as a percentage, the dividend per share in Pula must also be shown.

## **5.8 Requirement for review by auditors**

The following provisions apply in respect of interim financial statements, and preliminary financial statements:

- (a) subject to (b), interim reports are not required to be reviewed by an auditor;
- (b) Interim reports must however be reviewed by a listed company's auditors if the company's auditors have qualified their opinion, or produced an adverse opinion, on the company's latest audited financial statements. In such an instance, the listed company must publish the preliminary interim financial statements within 60 days of the end of interim period, and publish the reviewed interim financial statements within 90 days of the end of the interim period.

In such instances when the latest audited Financial Statements have a qualified opinion, the listed Company shall prepare and release a reviewed interim financial report as soon as possible within six months.

- (c) if an interim report has been reviewed by an auditor, the review report shall form part of the interim report published by the issuer.

## **5.9 Circulation of Annual Report**

Every listed company shall, within six months after the end of each financial year and at least twenty-one days before the date of the annual general meeting, distribute to all shareholders and submit to the BSE for publication on X-News:

- (a) a notice of annual general meeting; and
- (b) the annual report for the relevant financial year which shall include the audited financial statements reported upon by the company's auditors.

## **5.10 Minimum contents of the Interim, Preliminary, Abridged and Annual Reports**

- (a) The preparation of interim, preliminary and abridged Financial Statements must conform to IFRS. In addition to the IFRS, the following supplementary information must, where applicable and material, be included:

- (i) In respect of the period under review and the immediately preceding comparable period, a headline earnings per share and a diluted headline earnings per share figure must be disclosed, together with an itemized reconciliation between headline earnings and the earnings used in the calculation of earnings per share;
- (ii) Disclosure where there is a significant change to the initial estimates of a contingent consideration payable or receivable in terms of an acquisition or disposal.

(b) For the minimum contents of the Annual Report, refer **Appendix 5B**.

### **5.11 Change of financial year**

If a change in the financial year is proposed, the BSE must be consulted by the issuer.

### **5.12 Notification relating to capital**

A listed company must, without delay, publish an announcement on X-News containing details of the following information relating to its capital:

(a) **Alteration to capital structure**

any proposed change in its capital structure other than allotments of new shares, save that an announcement of a change in capital structure may be delayed while marketing or underwriting is in progress.

(b) **Changes of rights attaching to securities**

Any proposed change in the rights attaching to any class of listed securities or to any securities into which any listed securities are convertible;

(c) **Basis of allotment**

the basis of allotment of listed securities offered generally to the public for cash and of claw-back offers to shareholders; in the case of public offers an additional press announcement must appear before dealings commence;

(d) **Issues affecting conversion rights**

the effect, if any, of any issue of further securities on the terms of the exercise of rights under options and convertible securities; and

(e) **Results of new issues**

the results of any new issue of listed securities or of a public offering of existing securities must be made as soon as they are known. The issuer may, with the approval of the BSE, delay such publication until the obligation by the underwriter or others to take or procure securities is finally determined or lapses.

### **5.13 Rights between holders of securities**

(a) **Equality of treatment**

A listed company must ensure that all holders of a particular class of its securities receive fair and equal treatment.

**(b) Voting Rights**

A listed company shall not issue any securities with a voting right differing from other securities of the same class.

**(c) Pre-emptive rights**

Subject to Section 5.13 (d), a listed company proposing to issue equity securities for cash must first offer those securities by rights offer to existing equity shareholders in proportion to their existing holdings. Securities not taken up by such persons under the rights offer may then be issued for cash to other shareholders or investors otherwise than in the proportion mentioned above.

**(d) Waiver of pre-emptive rights**

Issues by a listed company of equity securities for cash made otherwise than to existing shareholders in proportion to their existing holdings will be permitted subject to approval by special resolution as defined in these Requirements.

**(e) Issues by major investees of a listed company**

- (i) A listed company must obtain the specific approval (determined in accordance with Section 5.13 (d)) of its shareholders before any major unlisted investee of the listed company undertakes an issue of shares for cash which would dilute the listed company's percentage interest in the equity securities of that investee. For the purposes of this Section and Sections 5.13 (e) (iii) and (iv), a major investee is defined as a company in which a listed company owns equity of 20% or more.
- (ii) The investee needs to be valued by an independent professional expert which value will be considered in computing the 20% referred to above. If a range of values are given, the highest value should be considered for this purpose.
- (iii) The obligation to obtain the consent of shareholders set out in Section 5.13 (e) (i) does not apply if the major investee is itself listed in which event the major investee must obtain the consent of its own shareholders.
- (iv) When a listed or unlisted major investee of a listed holding company has a rights offer and the listed holding company does not intend to follow its rights which would significantly dilute its percentage interest in the equity securities of that investee, the listed holding company must first obtain the specific approval (determined in accordance with Section 5.13 (d)) of its shareholders.

## **5.14 Shareholder spread**

- (a) All listed companies are required to ensure that a minimum percentage of each class of securities is held by the public as described in Sections 2.10 (f) and 2.11 (b)(iv) ('the minimum spread requirement').
- (b) If the percentage of a class of securities held by the public does not comply with the minimum spread requirements, the BSE may suspend or terminate the listing of a company in accordance with Chapter 13. The BSE may allow a reasonable time to restore the spread, unless this is precluded by the need to maintain the smooth operation of the market or in order to protect investors.
- (c) Notwithstanding the above, the BSE may allow a reduction in the minimum spread requirements if it considers such a reduction is in the best interests of the listed company and does not unduly prejudice investors, for example in a rescue situation.
- (d) A listed company must inform the BSE, in writing, without delay, when it becomes aware that the proportion of any class of listed securities in the hands of the public has fallen below the said minimum spread requirements.

### **5.15 Communication with shareholders**

A listed company must ensure that all the necessary facilities and information are available to enable holders of securities to exercise their rights. In particular it must:

- (a) inform holders of securities of the holding of meetings which they are entitled to attend;
- (b) enable them to exercise their rights to vote, where applicable; and
- (c) publish notices as per the Listings Requirements; refer **Appendix 5C** for examples of events which require immediate disclosure through the Exchange.

### **5.16 Dematerialisation**

All listed companies are required to be registered with the CSDB.

### **5.17 Listing and other fees**

A listed company must pay all applicable BSE fees as soon as such payment becomes due.

### **5.18 Dealing in Securities by Directors and Management**

An issuer, via its Compliance Officer, must submit to the BSE, the following information which shall be published on X-News and the BSE Daily Market Report:

- (a) details of all transactions in securities relating to the issuer by or on behalf of:
  - (i) a director, Chief Executive Officer, Principal Officer and company secretary (held beneficially, whether directly or indirectly) of the issuer;
  - (ii) a director Chief Executive Officer, Principal Officer and company secretary (held beneficially whether directly or indirectly) of a major subsidiary company of the issuer;
 or

- (iii) any associate of the directors and management listed in 5.18(a) (i) or (ii) above.
- (b) such submission shall contain the following information:
- (i) the identity of the directors and managers concerned;
  - (ii) the date on which the transaction was effected;
  - (iii) the price, number, total value and class of securities concerned.
  - (iv) in the case of options or any other similar right or obligation, the option strike price, strike dates and periods of exercise and/or vesting;
  - (v) the type (buy/sell) of transaction;
- (c) Directors and management are required to disclose to the issuer all information that the issuer needs in order to comply with Section 5.18 (a) and (b). The issuer must ensure that directors and management comply with their obligation to disclose to it all information that the issuer needs in order to comply with Section 5.18 (a) and (b).

Any director or manager who deals in securities relating to the issuer is required to disclose the information required by Section 5.18 (a) and (b) to the issuer without delay and, in any event, by no later than 1700hrs on the trade date. The issuer must in turn submit such information to the BSE without delay and, in any event, by no later than 0900hrs the morning after the trade date.

### **5.19 Dealing during prohibited periods**

- (a) A director or member of the management team (including their associates) of the issuer may not deal in any securities relating to the issuer:
- (i) during a closed period as defined herein; and
  - (ii) at any time when he is in possession of unpublished price sensitive information in relation to those securities.
  - (iii) within one (1) market day of the release of price sensitive information by his company
- (b) Listed companies are required to provide a framework to key management personnel and other employees when dealing in securities of the company. The policy must cover:
- (i) When employees may not deal in the company's securities,
  - (ii) When employees may not deal in listed securities of another entity (because they may obtain inside information about another entity's securities while performing their duties for their company).
  - (ii) Procedures to reduce the risk of insider trading.

### **5.20 Suspension of securities on request**



The BSE may grant a request for suspension of any listed securities in the following circumstances:

- (a) where a listed company is placed under provisional liquidation or in judicial management or subject to an application for a scheme of arrangement or reconstruction under the Act, or
- (b) where the request is made by the directors of a listed company and it is apparent that there are unsubstantiated rumours which may result in a false market and the BSE considers that this situation cannot be remedied by the immediate publication of an announcement to clarify the situation.

## **Appendix 5A**

### **Exchange News Service (X-News)**

**5A.1** The following words and/or phrases will have the meanings assigned to them herein.

<b>Word/Phrase</b>	<b>Meaning</b>
Regulatory Publications	Press announcements, prospectuses, prelisting statements and circulars prepared and released as per these Requirements
X-News Operational hours	From 0800 to 1700 on trading days

### **5A.2 Introduction**

As a result of a need to disseminate relevant company information to the market on a real time basis, the BSE has established a system called the Exchange News Service ("X-News").

X-News will facilitate early, equal and wide dissemination of relevant company information, and will improve communication between issuers and the market.

All relevant company information received by X-News will also be electronically transmitted to the X-News subscribers which include members of the BSE and major international data vendors, who will immediately disseminate such information to their customers.

### **5A.3 Method and form of submission**

- (a) With the exception of prospectuses, prelisting statements and circulars, all finalised regulatory publications containing price sensitive information must be submitted directly to the BSE by email or hard copy for immediate publication. All other regulatory publications must be submitted through the sponsor.
- (b) Prospectuses, prelisting statements and circulars to be published on X-News and circulated to shareholders must be submitted accompanied by a confirmation from the issuer declaring that the contents of the document are identical to that approved by the BSE.
- (c) The relevant company information must conform to the specifications set out in this Appendix, to prevent any delay in publication through X-News.
- (d) File names should not include any of the following characters #, %, &, \*, <, >, ?, |, {or}.
- (e) The file size must not exceed 5 mega bytes.

### **5A.4 Publication through X-News**

- (a) All Regulatory Publications will be published through X-News as soon as practically possible after such information has been approved (if applicable).
- (b) Publication through X-News will take place by the BSE electronically uploading the regulatory publication to the BSE Website and real time

distribution to X-News subscribers who will immediately disseminate such information to their customers.

#### **5A.5 X-News Processing**

Submission of documents will be processed on a “first-in-first-out” basis.

#### **5A.6 Fees for Publication through X-News**

Fees for publishing on X-News shall be charged on issuers as per the approved schedule of fees.

#### **5A.7 Publication on other markets**

- (a) Issuers with a secondary listing on the BSE should, as far as possible, ensure that the same regulatory publications is released, through X-News, at the same time that it is released on any other market/exchange on which its securities are listed. If, however, such information cannot simultaneously be published through X-News because it is released on the other market/exchange outside of X-News operational hours, the company should ensure that such information is published through X-News as soon as possible but no later than the next time that trading on BSE commences.
- (b) Sponsors of issuers with dual listings should liaise with BSE and the other exchanges with a view to achieving the above objectives.

#### **5A.8 Confirmation of publication through X-News**

Confirmation of publication through X-News will be sent by email to the submitter.

#### **5A.9 Publication on Newspapers and other Media**

- (a) Notwithstanding publication through X-News, regulatory publications which must also be published in the press in accordance with the BSE Listings Requirements must also be released in the press as soon as possible after it has been approved by the BSE (if applicable) but only after release on X-News.
- (b) Issuers who update their websites with regulatory publications can only release the announcements on their websites after such publications have been released through X-News.
- (c) Issuers cannot release regulatory publications to the public through any other media, including social media, unless they have received written confirmation from the BSE that the announcements have been released through X-News.

#### **5A.10 Indemnity**

- (a) The BSE will endeavour to ensure that regulatory publications submitted to X-News are published in the form submitted to X-News. The BSE, however, makes no undertaking, representation or warranty, either in this regard or as to the accuracy or completeness of the information published through X-News.
- (b) No liability shall attach to any Committee member or employee or agent of the Exchange for any loss or damage sustained by any person, member or by

any employee or agent of the Exchange, of any power or duty conferred or imposed upon the Committee by the BSE Act.

- (c) Each Issuer indemnifies the BSE and holds the BSE harmless against all and any loss (direct, indirect or consequential), liability, action, suit, proceeding, cost, demand and damage of all and every kind or nature, directly or indirectly arising from reliance on or receipt or use of the service or from the provision of the service (or its failure) as well as, but not limited to, the circumstances set out above, save when such loss, liability, action, suit, proceeding, cost, demand or damage is directly attributable to the BSE's own wilful default or gross negligence.

#### **5A.11 Copyright**

Any person that submits regulatory publications to X-News for publication is deemed to warrant to the BSE that it is the owner of the copyright and other intellectual property rights in such information ("the rights") or, if it is not the owner of such rights, that it has submitted such information with the owner's consent. The owner shall, in submitting or causing such information to be submitted to X-News, be deemed to have licensed the BSE to disseminate such information through X-News and the BSE shall, accordingly, not infringe any of the owner's rights by so doing.

#### **5A.12 Contact**

All issues relating to X-News must be routed through the Listings & Trading Department of the BSE.

## **Appendix 5B**

### **Minimum contents of the annual report**

5B.1 Every listed company, in addition to complying with the statutory requirements concerning annual reports, must prepare and present financial information therein as per IFRS. A statement must be included confirming that the accounting policies conform to IFRS and that the financial statements have been audited as per IAS and are consistent with the previous financial statements. If this is not the case, the statement should include details of the changes between the current and the previous financial statements.

5B.2 Further the listed company must also include the following information;

**(a) The Botswana Code of Corporate Governance:**

- (i) a narrative statement of how it has applied the principles set out in the Botswana Code of Corporate Governance, providing explanation(s) that enable(s) its shareholders to evaluate how the principles have been applied; and
- (ii) a statement addressing the extent of the company's compliance with the Code and the reasons for non-compliance with specific sections of the code if any;
- (iii) All the disclosures as required by Chapter 12 of these Requirements.

**(b) Management Discussion and Analysis/commentary:**

This must be written by the management of the company and give information to investors on the nature of the business and its prospects for the coming year taking into account the relevant industry environment and the economy.

**(c) Headline Earnings per Share:**

In respect of the current financial year and the immediately preceding financial year, headline earnings per share and diluted headline earnings per share figures must be disclosed, together with an itemized reconciliation between headline earnings per share and the diluted headline earnings per share;

(d) Sectoral/Segmental and geographical analysis of revenue as applicable

(e) A statement of each Director's (including his or her associates) holding in securities of the entity, including a director who has resigned during the reporting period, at the beginning and end of each financial year including the price and number of shares acquired by way of an employee share option scheme if any.

**(f) Shareholder spread:**

- (i) the number of public and non-public shareholders for every class of listed securities must be disclosed
- (ii) the percentages of each class of listed security that is held by public and non-public shareholders must be disclosed

**(g) Major shareholders:**

The interest of any shareholder, other than a director, who, in so far as it is known to the company, holds directly or indirectly 5% or more of any class of the listed company's capital, together with the amount of each such shareholder's holdings or, if there are no such shareholders, an appropriate negative statement

**(h) Share Incentive Schemes:**

The listed company must, in respect of its or its subsidiary companies' share incentive schemes, summarize the details and terms of options in issue at the beginning of the financial period, cancelled or issued during the financial period and in issue at the end of the financial period, the number of securities that may be utilized for purposes of the scheme at the beginning of the financial period, changes in such number during the financial period and the number of securities available for utilization for purposes of the scheme at the end of the financial period, as well as any other relevant information in this regard.

**(i) Profit forecasts:**

If the results for the period under review differ by 10% or more from any published forecast or estimate by the company for that period, an explanation of the difference must be given;

**(j) Unlisted securities:**

If applicable, a statement detailing the number and status of the unlisted securities must be made;

**(k) Special resolutions:**

Full details must be given of all special resolutions passed by the issuer's subsidiaries since the date of the previous directors' report relating to capital structure, borrowing powers, or any other material matter that affects the affairs of the company and its subsidiaries;

**(l) Issues for cash:**

Details must be given of all issues of securities for cash during the period under review, distinguishing between general and specific issues and including, at least, the number of securities issued, the price at which they were issued and, in the event of a specific issue to non-public shareholders, to whom they were issued;

**(m) Disclosure of individual directors' remuneration and benefits, including those of any director who has resigned during the reporting period:**

**(n) An analysis, in aggregate and by director, of remuneration and benefits paid in respect of each current financial year and the immediately preceding financial year by the company, or receivable by directors in their capacity as director, or in any other capacity, whether determined by the Constitution of the Company or not, distinguishing separately between executive and non-executive Directors.**

**(o) Without derogating from the generality of Section 5B.2(a) to (n) above, the directors' remuneration and benefits disclosed in accordance with the section must include disclosure of all remuneration and benefits received or receivable from the following entities:**

**(i) The issuer's subsidiaries and subsidiaries and associates thereof;**

- (ii) Joint ventures of the issuer or of issuer's subsidiaries and associates;  
and
- (iii) Entities that provide management or advisory services to the company or any of the entities referred to in Section 5B.2 (o) (i) and (ii) above.

**(p) Repurchased equity securities:**

Details must be disclosed in respect of the repurchase by an issuer of its own equity securities during the period under review. The following should be disclosed:

- (i) the total number of equity securities repurchased;
- (ii) the average price paid for the repurchased equity securities, calculated by dividing the total amount paid by the number of repurchased equity securities.

5.B.3 Standalone (Separate subsidiaries) financial statements are not required but may be presented alongside consolidated financial statements if desired.

5.B.4 A statement that all disclosures as required by the Companies Act have been adhered to must be made by the board of directors. Any omissions and the reasons therefore must be listed.

### **Appendix 5C**

**The following are examples of some events which require immediate disclosure through the Exchange**

Appointment, resignation, suspension or removal of the Chief Executive Officer
Declaration of dividends
Joint ventures, mergers, acquisitions
Change in the Directors, Company Secretary, Registrars or Auditors of the Entity
Any decision to change the stated capital of the Listed company including reduction of stated capital, Rights Issues, issue of shares credited as fully paid up by way of capitalization of reserves, redemptions, repurchases, minority buy-outs by the company and issue of shares of a class which is not already listed (irrespective of whether the company proposes or does not propose to obtain a listing for such shares issued).
Change of address of the registered office of the company or of any offices at which the register of the Securities of the Entity is kept
Alteration or amendment of the rights and privileges of any unlisted Securities issued by the company
A call of Securities for redemption
A change in control of the company (ownership of 20% or more of the voting shares of the company)
Full details of any trade which amounts to 5% or more of the voting shares of the company
Occurrence of any event which would result in the winding up of the company or any of its subsidiaries or the appointment of a receiver or liquidator of the company or any of its subsidiaries
Judicial or quasi-judicial actions of any nature initiated by or against the Entity which are of importance
Any information that is considered price sensitive



## CHAPTER 6 - Transactions

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### 6.1 Scope of the Chapter

This Chapter sets out the rules for transactions by issuers, principally acquisitions and realisations. The Rules are designed to ensure that shareholders are kept informed of transactions that may have an impact on the company and in the case of large transactions give shareholders an opportunity to vote on the matter. It does not matter whether the consideration paid or received is cash, shares, other securities, other assets, or any combination of these.

This Chapter also describes how transactions are classified, what the requirements are for announcements, and whether a Disclosure Document and shareholder approval is required.

### 6.2 Definitions

Unless the context otherwise requires:

- (a) "Transaction" refers to the acquisition or disposal of assets by an issuer or a subsidiary of the issuer, including an option to acquire or dispose of assets. It excludes an acquisition or disposal of current assets.
- (b) "Market value" means the last traded price of the issuer's shares on the market day preceding the date of the sale and purchase agreement.
- (c) "Market capitalisation" of the issuer is determined by multiplying the number of shares in issue by the last traded price of such shares transacted on the market day preceding the date of the sale and purchase agreement.

### 6.3 Categorisation

- (a) Any listed company considering a transaction must, at an early stage, engage the BSE for categorisation of the transaction.
- (b) A transaction is categorised by assessing its size relative to that of the listed company proposing to make it and the listed holding company of such listed company, if applicable.
- (c) Primarily, the comparison of size is made by the use of the percentage ratios set out in Section 6.4. The different categories of transactions are:
  - (i) Category 3 - a transaction where any percentage ratio is greater or equal to 5% and less than 10%;
  - (ii) Category 2 - a transaction where any percentage ratio is 10% or more but each is less than 40%;
  - (iii) Category 1 - a transaction where any percentage ratio is 40% or more.

## 6.4 Percentage Ratios

The percentage ratios are the figures, expressed as a percentage, resulting from the following calculations:

- (a) Consideration to market value of the company (the consideration divided by the aggregate market value of all the equity securities of the listed company). Consideration in this case must be based on market value. If consideration is not market determined, but a result of a closed door (private) negotiation, the consideration to book value of the company must be used instead; or
- (b) In circumstances where:
  - (i) either of the above calculations produces an anomalous result; and/or
  - (ii) the BSE believes that any of the transaction components are not included at fair value (taking account of the particular circumstances of the transaction); and/or
  - (iii) the categorisation calculations are inappropriate to the sphere of activity of the issuer, the BSE reserves the right to:
    - 1. request a fairness opinion on transaction values, or
    - 2. take into account other appropriate percentage ratios or
    - 3. use any other relevant indicators of size to determine the categorisation at its sole discretion.
  - (iv) the transaction falls within the definition of a “major transaction” as defined in the Companies Act, such transaction shall be categorised by the BSE as a Category 1 transaction irrespective of the resulting percentage ratios, and shall be subject to a Special Resolution as defined in these Requirements.
- (c) If the percentage ratio changes to the extent that the categorisation of the transaction is altered between the time the transaction is first discussed with the BSE and the announcement, the BSE must be consulted.

## 6.5 Consideration

When calculating the consideration:

- (a) where all or part of the consideration is in the form of securities to be listed, the consideration attributable to those securities means the aggregate market value of those securities based on the ruling price of such securities at the time the terms of the transaction are agreed.
- (b) the consideration is the amount paid to the vendors but the BSE may require the inclusion of further amounts (for instance where the purchaser agrees to discharge any liabilities, whether actual or contingent, of the vendors as part of the terms of the transaction).
- (c) if deferred consideration is or may be payable in the future, the consideration is the maximum possible total consideration payable under the agreement. If the total consideration is not subject to any maximum the

transaction will normally be treated as Category 1, notwithstanding the category into which it otherwise falls.

- (d) in respect of a new class of securities for which an application for listing will be made, the consideration will be the issue price of such securities or, if no price is attributable thereto, the expected aggregate market value of all those securities, determined by the BSE in the absence of evidence of same provided by the listed company.

## **6.6 Indemnities and similar arrangements**

Any agreement or arrangement with a party, not being a member of the listed company's group:

- (a) under which a listed company agrees to discharge any liabilities for costs, expenses, commissions or losses incurred by that party, whether or not on a contingent basis;
- (b) which would be exceptional; and
- (c) under which the maximum liability is unlimited:

will be treated as a Category 1 transaction. For the purpose of this paragraph indemnities such as those customarily given in connection with sale and purchase agreements and indemnities given to advisers against liabilities to third parties arising out of providing advisory services are not "exceptional". In cases of doubt the BSE must be consulted at an early stage in order to discuss the details of the transaction and, where necessary, to obtain a ruling from the BSE.

## **6.7 Aggregation of transactions**

- (a) The BSE will require transactions completed during the 12 months prior to the date of the latest transaction to be aggregated with the latest transaction for the purpose of determining the categorisation to apply to the latest transaction. In cases of doubt the BSE must be consulted at an early stage.
- (b) Without prejudice to the generality of Sections 6.7 (a), transactions will normally only be aggregated if they:
  - (i) are entered into by the company with the same party or with parties connected with one another;
  - (ii) involve the acquisition or disposal of securities or an interest in one particular company; or
  - (iii) together lead to significant involvement in a business activity which did not previously form a part of the company's principal activities.
- (c) If under Section 6.7 (a) above, the aggregation results in a Category 1 requirement for shareholder approval, then that approval is required only for the latest transaction.

## **6.8 Category 3 requirements**

In the case of a Category 3 transaction, the issuer must immediately announce, on X-News, the following:

- (i) Particulars of the assets acquired or disposed of, including the name of any company or business the subject of the transaction, where applicable;
- (ii) a description of the business carried on by the subject of the transaction;
- (iii) The aggregate value of the consideration, stating the factors taken into account in arriving at it and how it will be satisfied, including the terms of payment;

## **6.9 Category 2 requirements**

- (a) In the case of a Category 2 transaction, the issuer must immediately announce, on X-News and at least 1 national English language newspaper, the details stated in 6.8 as well as the following:
  - (i) Whether there are any conditions attaching to the transaction including a put, call or other option and details thereof;
  - (ii) The value (book value, net tangible asset value and the latest available open market value) of the assets being acquired or disposed of, and in respect of the latest available valuation, the value placed on the assets, the party who commissioned the valuation and the basis and date of such valuation;
  - (iii) In the case of a disposal, the intended use of the sale proceeds. In the case of an acquisition, the source(s) of funds for the acquisition;
  - (iv) The net profits attributable to the assets being acquired or disposed of. In the case of a disposal, the amount of any gain or loss on disposal;
  - (v) The value of the net assets that are the subject of the transaction, and the pro forma effect on the net assets and net tangible assets per share of the company;
  - (vi) The profits attributable to the net assets that are the subject of the transaction, and the pro forma effect on headline earnings per share of the company, including, if applicable, diluted headline earnings per share.;
  - (vii) With regard to Sections 6.8 (a) (viii) and (ix) above, such pro forma financial information must comply with the requirements of Chapter 4.
  - (viii) The rationale for the transaction including the benefits which are expected to accrue to the issuer as a result of the transaction;
  - (ix) In the case of an acquisition where not all the securities have been acquired state the reason why all the securities were not acquired and whether, and to what extent, anyone associated with the controller of the applicant, its subsidiaries or associates has an interest in the company being acquired;
  - (x) Details of any service contracts of the directors proposed to be appointed to the issuer in connection with the transaction.

- (xi) In the case of a disposal if shares or other securities formed part of the consideration received a statement whether such securities are to be sold or retained.
  - (xii) Where it is not possible to include all of the above details, issuers must include a cautionary/further cautionary in the announcement, together with the stated intention to announce these missing details at a later stage once they have been established.
  - (xiii) Any other information that the BSE may consider to be relevant
- (b) In addition, if securities have been acquired in a company which, as a result becomes a subsidiary company as defined in the Act the listed company must confirm, in writing to the BSE that the constitution of such subsidiary company, will be amended to conform to **Appendix 3C**. Such confirmation must also be included in the announcement as per Section 6.9 (a)

### **6.10 Supplementary notification**

- (a) The BSE must be advised and a supplementary press announcement made without delay if, at any time after the announcement referred to in Section 6.9(a) has been made, the listed company becomes aware that:
- (i) there has been a significant change affecting any matter contained in that earlier announcement; or
  - (ii) a significant new matter has arisen which would have been required to be mentioned in that earlier announcement if it had arisen at the time of the preparation of that announcement.
- (b) The supplementary notification must give details of the change or new matter and also contain a statement that, save as disclosed, there has been no significant change affecting any matter contained in the earlier notification and no other significant new matter has arisen which would have been required to be mentioned in that earlier notification if it had arisen at the time of the preparation of that notification.

### **6.11 Profit Guarantee or Profit Forecast**

- (a) Where an issuer enters into a transaction, and accepts a profit guarantee or a profit forecast (or any covenant which quantifies the anticipated level of future profits) from a vendor of assets/business, the issuer's announcement in Section 6.8(a) must contain information on the profit guarantee or the profit forecast, including the following:—
- (i) The views of the board of directors of the issuer in accepting the profit guarantee or the profit forecast and the factors taken into consideration and basis for such a view;
  - (ii) The principal assumptions including commercial bases and assumptions upon which the quantum of the profit guarantee or the profit forecast is based;

- (iii) The manner and amount of compensation to be paid by the vendor in the event that the profit guarantee or the profit forecast is not met and the conditions precedent, if any, and the detailed basis for such a compensation; and
- (iv) The safeguards put in place (such as the use of a banker's guarantee) to ensure the issuer's right of recourse in the event that the profit guarantee or the profit forecast is not met, if any.

For the avoidance of doubt, the term "profit guarantee" can only be used for transactions where the vendor will compensate the issuer in cash for any shortfall in the level of profits when it provides a quantifiable anticipated level of future profits.

- (b) Where the transaction is a Category 1 transaction, the shareholders' circular must contain the information in Section 6.11(a) and the following:
  - (i) A confirmation from the Directors of the listed company that they are recommending the transaction after having examined the bases and assumptions, accounting policies and calculations for the profit guarantee or the profit forecast thereof; and
  - (ii) A statement by the corporate financial advisor to the issuer as to whether or not they are of the view that the transaction is on normal commercial terms and is not prejudicial to the interest of the issuer and its shareholders.
- (c) Where the profit guarantee or the profit forecast has been met, the issuer should immediately announce this through the BSE. Where the profit guarantee or the profit forecast has not been met, the issuer should immediately announce through the BSE the following:
  - (i) The variance between the profit guarantee or the profit forecast and the actual profit, and the reason for the variance;
  - (ii) any variation of the rights of the issuer; and
  - (iii) the possible course(s) of action by the issuer to protect the interests of the shareholders of the issuer, if any. Notwithstanding this, the issuer must provide timely updates on the specific course of action including its progress and outcome of the action.
  - (iv) Where there is any significant variation or amendment in the terms of an agreement, the issuer must immediately make an announcement of such a variation. Where such a variation prejudices the issuer, the board of directors of the issuer must disclose the basis for the acceptance of such a variation.

## **6.12 Category 1 requirements**

- (a) Upon the terms of a Category 1 transaction being agreed, the issuer must:
  - (i) immediately comply with the requirements for a Category 2 transaction and state within the announcement that the transaction is

- subject to shareholders' approval and that a circular to shareholders will be issued in compliance with 6.12(a) (ii); and
- (ii) within 28 days, dispatch a circular to shareholders containing a notice of general meeting to obtain their approval and any agreement effecting the transaction must be conditional upon such approval being obtained.
- (b) The Category 1 circular must comply with the general requirements relating to circulars as set out in Chapter 4 and, in addition, must include:
- (i) the information required under a Category 2 transaction as set out in Section 6.9(a)
  - (ii) details of any service contracts of proposed directors of the listed company;
  - (iii) where goodwill is involved, a statement regarding the issuer's accounting policy towards goodwill, as well as the reasons for such goodwill payment;
  - (iv) a statement giving the directors' opinion on the transaction;
  - (v) in the case of a transaction involving immovable freehold or leasehold property, the applicable information required by Chapter 9; and
  - (vi) a statement that any agreement effecting the transaction is conditional upon shareholder approval being obtained
  - (vii) a statement giving the directors' recommendation as to how shareholders should vote at the general meeting to approve the transaction and an indication as to how the directors intend to vote their shares, if applicable, at the general meeting.
  - (viii) in the case of an acquisition of an interest in an undertaking which will result in consolidation of the net assets of that undertaking or a disposal of an interest in an undertaking which will result in the net assets no longer being consolidated an accountants' report as set out in Chapter 4.
  - (ix) in the case of a transaction not falling within (viii) above, a summary of any relevant financial information (or a statement that none exists) together with confirmation that the directors consider that the value to the company justifies the price paid or received by it; and
- (c) In addition, if the Category 1 transaction results in an issue of securities that, together with any other securities of the same class issued during the previous 3 months, would increase the securities issued by more than 30%, then the issuer must include in the Category 1 circular the information required to be disclosed for a Pre-listing Statement.

### **6.13 Contents of circulars**

- (a) Circulars to shareholders must comply with Section 4.2 and the following:
  - (i) provide a clear and adequate explanation of the subject matter;
  - (ii) if voting or other action is required:

1. contain all information necessary to allow the holders of the securities to make a properly informed decision; and
  2. contain a heading drawing attention to the importance of the document and advising holders of securities that are in any doubt as to what action to take, to consult appropriate independent advisers;
- (b) state in which other official languages, if any, the circular is also available and where copies of such circular or and translations thereof may be obtained;
- (c) include all the information published, or to be published, simultaneously with the circular, in any announcement issued in connection with the transaction to which the circular or prelisting statement relates;
- (d) Where the circular is accompanied by or forms part of a Disclosure Document which contains the information required, such information need not be repeated.
- (e) The working capital statement and, where relevant, information on group prospects and any profit forecast must be on the basis of the enlarged group in the case of an acquisition and on the basis that the disposal has taken place in the case of a disposal.
- (f) Where the listed company is issuing securities for which listing is sought, the information regarding major interests in securities and directors' interests in securities must be given in relation to the share capital both as existing and the share capital as enlarged by the securities for which listing is sought.
- (g) If securities are being issued as consideration for an acquisition and a Category 1 circular is required, then listing will not be granted for those securities until shareholders' approval has been obtained and any required registration of a special resolution(s) has been effected.
- (h) Circulars or supplementary Circulars must be published on X-News, and also distributed to shareholders.

#### **6.14 Mergers and Acquisitions**

Until the Botswana Mergers and Acquisitions Code is in place, listed Companies must comply with the South African Mergers and Acquisitions Regulations of 2011 when dealing with affected transactions.



## CHAPTER 7 - Transactions with Related Parties

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### 7.1 Scope of Chapter

Transactions with parties related to a listed company are known as related party transactions.

The objective of this Chapter is to guard against the risk that interested persons could influence the issuer, its subsidiaries or associated companies, to enter into transactions with interested persons that may adversely affect the interests of the issuer or its shareholders.

The safeguards are intended to prevent a related party from taking advantage of its position and also to prevent any perception that it may have done so. In this regard, this chapter sets out safeguards that apply to:

- (a) Transactions and arrangements between a listed company and a related party; and
- (b) Transactions and arrangements between a listed company and any other person that may benefit a related party.

This Chapter should be read with Chapter 6 regarding transactions.

### 7.2 Definitions

For the purposes of this section, the following definitions apply:

- (a) "Independent Shareholder" means a shareholder who does not have a significant personal interest or any other form of conflict of interest perceived by the BSE in respect of a transaction being considered.
- (b) "related party transaction" means
  - (i) A transfer of resources, services or obligations between a listed company (or any of its subsidiaries) and a related party, regardless of the price;
  - (ii) a transaction, or any variation or novation of an existing agreement, between a listed company (or any of its subsidiaries) and a related party;
  - (iii) an arrangement pursuant to which a listed company and a related party each invests in, or provides finance to, another undertaking or asset; or
  - (iv) any other similar transaction or arrangement between a listed company and any other person the purpose and effect of which is to benefit a related party.
- (c) "related party" has the same meaning as defined in IAS 24 or its successor.

- (d) "material shareholder" means any person who is, or within the 12 months preceding the date of the transaction was, entitled to exercise or control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general meetings of the listed company (or any other company which is its subsidiary or holding company or which is a fellow subsidiary of its holding company);
- (e) Notwithstanding the above definitions, the BSE may, in its sole discretion, determine that a transaction is a related party transaction if extraordinary conditions exist.

### **7.3 Consultation with the BSE**

- (a) Notwithstanding any other provisions of these Listings Requirements, any contemplated related party transaction, by a listed company (or any of its subsidiaries), which will lead to the ratio of the total transaction value (of all transactions with the same related party) to the Company's book value as per the last audited financial statements, exceeding 0.25%, shall be referred by the issuer to the BSE for review before its implementation. The full details of the contemplated transaction must be disclosed to the BSE. The BSE shall give such directions to the issuer, as it may deem necessary, regarding the disclosure of the proposed related party transaction to shareholders. Issuers may not exempt themselves from the provisions of this section.
- (b) Issuers must take into consideration the value of all transactions entered into by the listed company (or any of its subsidiaries) with the same related party (and any of its associates) at the time of contemplation of the related party transaction for the purpose of complying with section 7.3(a) above. For the purpose of this section, the related party includes any other person including associates of such person(s) acting in concert with the related party.
- (c) The BSE may, in its sole discretion, require the listed company to provide it with a declaration that, to the best of the knowledge and belief of the directors, any nominee shareholders do not include any person who may be acting in concert with any other person in relation to the related party transaction.

### **7.4 Requirements for a related party transaction**

#### **(a) Audit Committee Approval**

- (i) Any related party transaction by a listed company (or any of its subsidiaries ) shall be approved by the Audit Committee of the listed company, either prior to the transaction being entered into or, if the transaction is expressed to be a conditional on such approval, prior to the completion of the transaction.
- (ii) Directors should ensure that they have, or have access to, sufficient knowledge or expertise to assess all aspects of the proposed Related Party Transactions, where necessary they should obtain appropriate professional and expert advice from appropriately qualified persons.

- (iii) If a director of a listed company has a personal interest in a matter being considered at a directors meeting, they must recuse themselves from the meeting while the matter is being considered and shall not vote on the matter.

**(b) Independent Shareholders Approval**

- (i) The listed company must send a circular to its shareholders including the information required in Section 7.5. Any circular sent to shareholders in connection with a related party transaction must provide sufficient information to enable any recipient of the circular to evaluate the effects of the transaction on the listed company;
- (ii) In addition to Audit Committee approval, a listed company must obtain independent shareholders' approval by way of an ordinary resolution or Special Resolution as shall be directed by the BSE taking into account the circumstances of each matter.
- (iii) Shareholder approval must be obtained either prior to the transaction being entered into or, if the transaction is expressed to be conditional on such approval, prior to the completion of the transaction.

**(c) Independent Expert's Opinion**

- (i) In the event that there is reliance on a report on the transaction from an independent expert, the report must state the expert's opinion as to whether the transaction is fair and reasonable to shareholders. Independence for this purpose is defined as a person or corporate which is not considered a "related party" to the listed company.
- (ii) The expert's opinion must be displayed prominently in the notice of the meeting and on the covering page of any accompanying documents.
- (iii) the report from the independent expert required must set out, at minimum:
  - 1. the reasons for the opinion;
  - 2. the key assumptions made;
  - 3. the factors taken into consideration in forming the opinion;
  - 4. a statement as to whether the transaction is on normal commercial terms, in the ordinary course of business, fair and reasonable and in the interests of the listed company and its shareholders as a whole.

**7.5 Contents of the Announcements**

- (a) If an issuer, or any of its subsidiaries, proposes to enter into a related part transaction and the BSE determines that the transaction is a related party transaction, the issuer must:
  - (i) make an announcement containing:
    - 1. the information specified Section 6.8(a)

2. the name and the relationship between the related party and the listed company;
  3. Details of the related party concerned, and the nature of that person's interest in the transaction.
  4. Details of the transaction including relevant terms of the transaction, and the bases on which the terms were arrived at.
  5. The rationale for, and benefit to, the listed company.
- (ii) send a circular to its shareholders containing the information required in Chapter 4.
- (iii) The circular must include a statement by the board of directors confirming whether the transaction is fair insofar as the shareholders of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the BSE.
- (iv) The board of directors must obtain a fairness opinion (which must be included in the circular) before making this statement unless the subject matter of a related party transaction is one of the following in which case the consideration should be compared to the valuation:
1. property and a valuation report has been prepared in accordance with Chapter 9; or
  2. mineral assets and a competent person's report has been prepared in accordance with Chapter 8 by an independent competent person and such report contains a valuation.
- (b) If, after obtaining shareholder approval but before the completion of a related party transaction, there is a material change to the terms of the transaction, the listed company must comply again separately with Sections 7.4 and 7.5 in relation to the transaction, as shall be determined with the BSE.

The BSE would (amongst other things) generally consider an increase of 10% or more in the consideration payable to be a material change to the terms of the transaction.

- (c) Where a meeting of the listed company has been called to approve a transaction and, after the date of the notice of meeting but prior to the meeting itself, the transaction becomes a related party transaction, the BSE may require that the listed company either:
- (i) take immediate steps to amend the relevant resolution by including the condition referred to in paragraph 7.4(b)(iv) and give notice of the amendment to shareholders by way of a circular containing also any information required by Chapter 4 which was not contained in the original circular accompanying the notice of the meeting; or
  - (ii) withdraw the notice of the meeting and convene a fresh meeting complying with Rule 7.4(b)

## **7.6 Small related party transactions**

In the case of a transaction with a related party where the percentage ratios referred to in Section 6.4 (a) are less than or equal to 5%, but exceed 0.25%, the requirements for a transaction with a related party set out in Sections 7.4 and 7.5 do not apply as shall be determined with the BSE and, instead, the issuer must, prior to completing the transaction:

- (a) inform the BSE in writing of the details of the proposed transaction;
- (b) provide the BSE with written confirmation from an independent professional expert acceptable to the BSE that the terms of the proposed transaction with the related party are fair as far as the shareholders of the issuer are concerned;
- (c) publish details of the proposed transaction in accordance with Section 7.5(a) (i) including a statement that Section 7.6 (b) has been complied with, that the transaction has been declared to be fair and that the fairness opinion will lie for inspection at the issuer's registered office for a period of 28 days from the date of announcement; and
- (d) comply with the requirements regarding transactions with related parties as per Sections 7.4 and 7.5, if the independent professional expert states that the transaction is not fair.

## **7.7 Transactions not regarded as related party transactions**

A transaction will not be regarded as a related party transaction if any of the following situations apply:

- (a) the listed company does not have any equity securities listed;
- (b) the listed company is an external company with a secondary listing on the BSE;

## **7.8 Contents of Circulars**

The requirements as per Section 6.14 apply.

## CHAPTER 8 - Mineral Companies

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### 8.1 Scope of section

This section sets out the criteria for the listing of, and the additional listing and disclosure requirements for Mineral Companies and, in certain circumstances, substantial mineral and/or natural resource assets and/or projects of non-mineral companies. In the event of a conflict with other sections, the provisions in this chapter shall prevail. Oil and gas exploration and mining companies are included and also referred to as Mineral Companies.

Where a company's primary listing is on a Recognized Exchange, the BSE will accept the listings requirements of that exchange but reserves the right to request such company to comply with such aspects of the BSE Listings Requirements and/or additional requirements as it may, determine, in order to ensure that locally based investors are not disadvantaged by Rules of the primary Exchange where applicable.

### 8.2 Definitions

For the purposes of this chapter, unless otherwise stated or the context otherwise requires, terms signifying the singular shall include the plural and vice versa and the following terms shall have the meanings set out below:

**Competent Person's Report:** is the report prepared on mineral assets and projects, by or under the supervision of a Competent Person for the purpose of providing information to investors.

**Competent Person:** any registered professional person who is recognized under any of the Accepted Mining Codes as qualified to sign off a Competent Person's Report.

**Exploration:** the intentional searching or prospecting for any mineral, but not including mining.

**Material:** Where the word Material is defined in a relevant accepted mining code that definition shall stand.

**Mineral Company:** a company whose principal activity is that of mining and/or exploration of minerals and/or natural resources including oil and gas.

**Mining:** any excavation of the earth, including the portion under water or in any tailings, as well as any borehole, made for the purpose of winning a material or the exploitation of any mineral deposit in any other manner.

**Readers Panel:** a Panel of experts established by the BSE to advise the BSE in relation to compliance with the accepted mining codes and this Chapter.

**Accepted Mining Codes:** the South African (SAMCODEs), Australian (JORC), Canadian (NI 43-101) National Mineral Codes as well as the Petroleum Resources Management System (SPE-PRMS) for oil and gas exploration and mining companies. These are documents that set out minimum standards, recommendations and guidelines for Public Reporting of Exploration Results, Mineral Resources and Mineral Reserves. The BSE shall revise the accepted mining codes list from time to time.

Substantial Mineral Assets: mineral assets of a non-Mineral Company which represent, or will represent, 10% or more of the total assets or revenue or profits of a non-Mineral Company.

### 8.3 Guiding principles

The BSE has adopted the SAMCODEs, JORC Code, NI 43-101 Code and SPE-PRMS as adopted and amended from time to time by the relevant professional institutes, for use by listed companies in their reporting. A listed company is allowed to adopt any of these accepted mining codes. For oil and gas exploration companies, only the SPE-PRMS Code may be adopted.

### 8.4 General

The Listings Requirements apply to Mineral Companies and, in certain circumstances, to non-Mineral Companies owning substantial mineral assets. If information required to be disclosed under this section is confidential, for legal and/or other reasons and the directors of the applicant issuer can prove, to the satisfaction of the BSE that the applicant issuer's legitimate interests might be prejudiced if the information were to be disclosed, then the BSE may grant a dispensation from the requirement to make the information public. In the event the BSE has reason to believe that confidentiality of the information is breached, the BSE reserves the right to withdraw the dispensation and direct the Company to publish the information immediately.

### 8.5 Readers Panel

- (a) The BSE will refer all Competent Person's Reports to the Readers Panel for approval based on compliance with the relevant mining code.
- (b) Any unresolved complaints concerning a Competent Person in respect of a Competent Person's Report will be referred by the BSE to the appropriate body under which the individual or individuals is/are registered as professionals.
- (c) Competent Person's Reports must be submitted to the BSE for approval in accordance with the following timetable:

Day (D)	Action Required
D	Notify the BSE that a Competent Person's Report will be submitted for approval. The notification must include the name of the applicant issuer, the type of commodity that is involved, the name of the Competent Person, the date on which the report will be submitted and a short description of the transaction/reason for the report.
D+7	Signed Competent Person's Report to be submitted to the BSE.
D+14	BSE will make available the Readers Panel comments to the listed company which comments will be binding on the company. In the event the panel requires more time to consider the report, the company shall be informed accordingly at this point.

### 8.6 Criteria for listing

The BSE may admit the securities of an applicant to list on the Main Board or the Venture Capital Board (VCB) provided that the applicant can demonstrate to the satisfaction of the BSE that its management has satisfactory experience in mining and/or exploration depending on its business, and the BSE's Listing Requirements as applicable.

The following types of mineral exploration and mining companies may apply to list on the BSE:

- (a) Producing Mining Companies
  - (i) These shall have proven and probable reserves to provide a mine life of at least ten (10) years from the date of listing, as estimated by an independent competent person.
  - (ii) Companies that are pre-production must provide a positive bankable feasibility study and commercial contracts supporting forecast revenues.
  - (iii) For companies with operational mining projects, documented historical production and financial performance as well as commercial contracts supporting forecast revenues must be submitted.
  - (iv) The companies shall have sufficient funds or commitments of funding to bring the mine into commercial production if applicable, adequate working capital to fund all budgeted capital expenditures and carry on the business.
  - (v) The company must be solvent as declared by the Board of directors
- (b) Mineral Exploration and Development Companies
  - (i) These must have properties which have been subject to exploration with results indicating that the property contains at a minimum a compliant inferred resource or equivalent per any of the accepted Mining Codes as detailed in a report prepared by an independent competent person.
  - (ii) The company must present a planned work programme (minimum of three (3) years) for further exploration and/or development approved by the board of directors, detailing the expected costs and timelines.

## **8.7 Additional contents of Disclosure Documents, and circulars prepared by mineral companies, and non-mineral companies owning substantial mineral assets**

In addition to the relevant Listings Requirements applicable to Disclosure Documents for all listed companies, the following information must be included in such documents where they are required to be prepared by Mineral Companies, and by non-Mineral Companies with substantial mineral assets:

- (a) a Competent Person's Report (the Report), complying with:



- (i) The relevant mining code. The Report must have an effective date (being the date at which the contents of the Report are valid) less than six months prior to the date of publication of the Disclosure Document or Category 1 circular. If applicable, where between six and twelve months have passed since the effective date of the Report, the Directors of the applicant may submit a declaration that they are not aware of any new information, data, changes in assumptions or any other changes that materially affect the information contained in the Report; and
  - (ii) Section 8.8 of this chapter;
- (b) Confirmation that the applicant, or its group (including companies in which it has investments), is in possession of the necessary legal title or ownership rights to explore and/or mine the relevant minerals.

## **8.8 Competent Person's Report**

A Competent Person's Report must:

- (a) be updated prior to publication of the Disclosure Document or Category 1 circular if further significant data becomes available after the effective date of the Report;
- (b) have in the margins the particular section of the Listings Requirements and the relevant mining code complied with.
- (c) Contain a statement detailing the following as applicable:
  - (i) Exploration expenditure incurred to date by the applicant issuer and by other parties, where available;
  - (ii) Planned exploration expenditure that has been committed, but not yet incurred, by the applicant issuer concerned; and
  - (iii) Planned exploration expenditure that has not been committed to by the applicant issuer but which is expected to be incurred within a twelve (12) month time period, in sufficient detail to fairly present future expectations;
- (d) Be included in the relevant Disclosure Document in full. An abridged version of such Disclosure Document may be published in the press subject to approval by the BSE. The abridged version should be a concise summary of the Report and must cover, at a minimum, where applicable:
  - (i) purpose;
  - (ii) project outline;
  - (iii) location map indicating area of interest;
  - (iv) legal aspects and tenure, including any disputes, risks or impediments;
  - (v) geological setting description;
  - (vi) exploration programme and budget;
  - (vii) brief description of events that may positively or negatively impact the project;
  - (viii) brief description of key environmental issues;
  - (ix) Mineral Resource and Mineral Reserve Statement;

- (x) reference to risk paragraph in the full Competent Person's Report;
- (xi) statement by the Competent Person that the summary is a true reflection of the full Competent Person's Report; and
- (xii) summary valuation table;
- (xiii) Any other information which may be deemed material to investors.

## **8.9 Announcements**

- (a) In addition to the other requirements under the BSE Listings Requirements, announcements by Mineral Companies and by non-Mineral Companies with substantial mineral assets must comply with the standards of the relevant mining code insofar as they relate or refer to exploration results, Mineral Resources and Mineral Reserves and valuation of mineral assets. Announcements must state the name of the Competent Person and that the Competent Person has approved the information, in writing, in advance of publication.
- (b) The BSE reserves the right to request the detailed information supporting the announced information and submit the same for review by the Readers Panel, at the cost of the company concerned, to assess compliance with the relevant mining code. The BSE will normally take this action in instances where it has reason to believe there has been potentially price sensitive inaccuracies in the announcement(s). Any non-compliance with the relevant code may result in a restatement and consequent re-publication of the information concerned.

## **8.10 Additional continuous reporting obligations on Mining and Exploration activities**

In addition to the Requirements for all BSE listed companies, Mineral Companies and non-Mineral Companies owning interests in substantial mineral assets must submit to the BSE for publication, the following additional disclosures (Quarterly Market Updates) within 30 days of the end of each quarter.

- (a) Details of the mining production and development activities of the entity or group relating to mining and related operations, and a summary of the expenditure incurred on those activities. If there has been no production or development activity, that fact must be stated.
- (b) A summary of the exploration activities (including geophysical surveys) of the entity or group, and a summary of the expenditure incurred on those activities. If there has been no exploration activity, that fact must be stated.
- (c) The mineral exploration and development entity, or entity which has or whose subsidiary has acquired an interest in a mining tenement that is significant to the entity as the case may be, must include each of the following items in each report:
  - (i) The location of mining tenements held.
  - (ii) The location of mining tenements disposed of during the quarter.
  - (iii) Beneficial percentage interests in farm-in or farm-out agreements acquired or disposed of during the quarter.

- (d) At the same time as they submit the Quarterly Market Update, Mining Companies should also submit a Mining Company Quarterly Cash flow Update in the format set out in **Appendix 8A**.
- (e) All reports must also comply with the relevant mining code if they include a statement relating to any of the following:
  - (i) Exploration results
  - (ii) Mineral resources or ore reserves.

## Appendix 8A

### Mining Company Quarterly Cash flow Update

Name of company

BSE Code

Quarter ended ("current quarter")

#### Consolidated statement of cash flows

<b>Cash flows related to operating activities</b>	Curent quarter BWP'000	Year to date (..... months) BWP'000
1.1 Receipts from product sales and related debtors		
1.2 Payments for (a) exploration & evaluation (b) development (c) production (d) administration		
1.3 Dividends received		
1.4 Interest and other items of a similar nature received		
1.5 Interest and other costs of finance paid		
1.6 Income taxes paid		
1.7 Other (provide details if significant)		
<b>Net Operating Cash Flows</b>		
<b>Cash flows related to investing activities</b>		
1.8 Payment for purchases of: (a) prospects (b) equity investments (c) other fixed assets		
1.9 Proceeds from sale of: (a) prospects (b) equity investments (c) other fixed assets		
1.10 Loans to other entities		
1.11 Loans repaid by other entities		
1.12 Other (provide details if significant)		
<b>Net investing cash flows</b>		
1.13 Total operating and investing cash flows (carried forward)		

1.13	Total operating and investing cash flows (brought forward)		
	<b>Cash flows related to financing activities</b>		
1.14	Proceeds from issues of shares, options, etc.		
1.15	Proceeds from sale of forfeited shares		
1.16	Proceeds from borrowings		
1.17	Repayment of borrowings		
1.18	Dividends paid		
1.19	Other (provide details if significant)		
	<b>Net financing cash flows</b>		
	<b>Net increase (decrease) in cash held</b>		
1.20	Cash at beginning of quarter/year to date		
1.21	Exchange rate adjustments to item 1.20		
1.22	<b>Cash at end of quarter</b>		

**Payments to directors of the company and associates of the directors**

**Payments to related entities of the company and associates of the related entities**

		Curent quarter BWP'000
1.23	Aggregate amount of payments to the parties included in item 1.2	
1.24	Aggregate amount of loans to the parties included in item 1.10	

1.25 Explanation necessary for an understanding of the transactions

**Non-cash financing and investing activities**

2.1 Details of financing and investing transactions which have had a significant effect on consolidated assets and liabilities but did not involve cash flows

2.2 Details of outlays made by other entities to establish or increase their share in projects in which the reporting entity has an interest

**Financing facilities available**

*Add notes as necessary for an understanding of the position.*

	Amount available BWP'000	Amount used BWP'000
3.1 Loan facilities		
3.2 Credit standby arrangements		

#### Estimated cash outflows for next quarter

	BWP'000
4.1 Exploration and evaluation	
4.2 Development	
4.3 Production	
4.4 Administration	
<b>Total</b>	

#### Reconciliation of cash

Reconciliation of cash at the end of the quarter (as shown in the consolidated statement of cash flows) to the related items in the accounts is as follows.

	Curent quarter BWP'000	Previous quarter BWP'000
5.1 Cash on hand and at bank		
5.2 Deposits at call		
5.3 Bank overdraft		
5.4 Other (provide details)		
<b>Total: cash at end of quarter (item 1.22)</b>		

#### Changes in interests in mining tenements

	Tenement reference	Nature of interest (note (2))	Interest at beginning of quarter	Interest at end of quarter
6.1	Interests in mining tenements relinquished, reduced or lapsed			
6.2	Interests in mining tenements acquired or increased			

### Issued and quoted securities at end of current quarter

Description includes rate of interest and any redemption or conversion rights together with prices and dates.

	Total number	Number quoted	Issue price per security (see note 3) (thebe)	Amount paid up per security (see note 3) (thebe)
7.1 <b>Preference +securities</b> <i>(description)</i>				
7.2 Changes during quarter (a) Increases through issues (b) Decreases through returns of capital, buy-backs, redemptions				
7.3 <b>+Ordinary securities</b>				
7.4 Changes during quarter (a) Increases through issues (b) Decreases through returns of capital, buy-backs				
7.5 <b>+Convertible debt securities</b> <i>(description)</i>				
7.6 Changes during quarter (a) Increases through issues (b) Decreases through securities matured, converted				
7.7 <b>Options</b> <i>(description and conversion factor)</i>			<i>Exercise price</i>	<i>Expiry date</i>
7.8 Issued during quarter				
7.9 Exercised during quarter				
7.10 Expired during quarter				
7.11 <b>Debentures</b> <i>(totals only)</i>				

7.12	<b>Unsecured notes</b> ( <i>totals only</i> )		
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**Compliance statement**

- 1 These Financial Statements comply with IFRS as required by the BSE Listings Requirements.
- 2 This report does /does not\* (*delete one*) give a true and fair view of the matters disclosed.

Sign here: ..... Date: .....  
 (Director/Company secretary)

Print name: .....

**Notes**

- 1 The quarterly report provides a basis for informing the market how the entity’s activities have been financed for the past quarter and the effect on its cash position. An entity wanting to disclose additional information is encouraged to do so, in a note or notes attached to this report.
- 2 The “Nature of interest” (items 6.1 and 6.2) includes options in respect of interests in mining tenements acquired, exercised or lapsed during the reporting period. If the entity is involved in a joint venture agreement and there are conditions precedent which will change its percentage interest in a mining tenement, it should disclose the change of percentage interest and conditions precedent in the list required for items 6.1 and 6.2.
- 3 **Issued and quoted securities:** The issue price and amount paid up is not required in items 7.1 and 7.3 for fully paid securities.



## CHAPTER 9 - Property Companies

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### 9.1 Scope of section

- (a) Listed property companies are subject to additional disclosure requirements, principally relating to valuations and financial information.
- (b) A listed property company, or a property company seeking a listing, must comply with the requirements contained in this section, in addition to all other applicable Listings Requirements.
- (c) Other issuers who own property or who conclude property transactions must comply with the valuation requirements set out in this Chapter.

### 9.2 Definitions

For the purposes of Section 9, the following definitions apply:

- (a) "gross assets" is the net book value of the company's assets before deducting outstanding mortgages;
- (b) "property" refers to immovable freehold or leasehold property;
- (c) "property companies" are companies primarily engaged in property activities including:
  - (i) the holding of properties and development of properties for letting and retention of investments; or
  - (ii) the purchase or development of properties;
- (d) "net annual rent" is the income generated by any property attributable to the company as estimated by an external valuer:
  - (i) ignoring any special receipts or deductions arising from the property;
  - (ii) before taxation (including tax on profits and any allowances for interest on capital or loans); and
  - (iii) after making deductions for any disbursements including expenses of managing the property and appropriate allowances to maintain it in a condition to command its rent;
- (e) "net book value" is the value of assets after adjusting the cost to reflect any depreciation or other adjustment so as to reflect the figure at which those properties are shown in the books of account;
- (f) "published valuation" is the valuation referred to in the listed company's annual financial statements or pre-listing statement or circular whether produced independently or by the directors and stated as such; and
- (g) "external valuer" is an independent property valuer, who is in practice and is a member of an Institute acceptable to the BSE.

### 9.3 Additional information for listing

A property company's Disclosure Document must include the information required by Chapter 4, as far as is relevant and must include:

- (i) summary details of the property portfolio including location, tenancies, significant lessees, rent, lease expiry, review date, option to review, escalation, average property yields and current replacement costs; Pie charts and bar charts may be used to illustrate the respective sectorial and geographical spread of properties in the property portfolio and leases falling due for renewal or review;
- (b) financial details, which must include, inter alia:
  - (i) a profit history which may need to be on a pro-forma basis;
  - (ii) a pro-forma balance sheet;
  - (iii) salient details of net distributable income and distributions;
  - (iv) statements on taxation, and
  - (v) a valuation report in accordance with this Chapter;
- (c) the following details in respect of each of the promoters, managers, trustees and directors of the applicant (or any subsidiary or holding company):
  - (i) any beneficial interest, whether direct or indirect, interest of those persons in relation to any property held by the applicant or to be acquired out of the proceeds of the issue, where any of those persons is or has contracted to become a tenant of any part of the property; and
  - (ii) any relationship between any of those persons and another person where a duty in relation to that other person conflicts, or may conflict, with a duty to the applicant; and
- (d) in the case of a property managed by agents, details of their name, legal form, business address, terms of contract and remuneration, experience and qualifications.

#### **9.4 Valuation Reports**

- (a) A valuation report prepared by an external valuer must be obtained by:
  - (i) a new applicant if it is a property company;
  - (ii) a listed property company, if it makes an acquisition or disposal of property which is either a Category 1 transaction or is a related party transaction within the meaning of Chapters 6 and 7, respectively;
  - (iii) a listed property company which owns property constituting security for debt securities that are to be listed; or
  - (iv) a listed property company which refers to the valuation of property in pre-listing statements or circulars.
- (b) Where a valuation report is included in a pre-listing statement or circular, there must also be a statement reconciling that valuation with the equivalent figure included in the listed company's latest published balance sheet.
- (c) The summary of the valuation report to be included in the Disclosure Document must:
  - (i) state the following details in respect of each property:
    - 1. the market valuation, as determined by the external valuer;

2. the address and registered description;
  3. nature and date of valuer's physical inspection, which must not be older than 6 months prior to signature of the valuation report;
  4. a brief description (e.g. land or buildings, approximate site and floor areas);
  5. existing use (e.g. shops, offices, factories, residential);
  6. relevant planning permissions;
  7. any material contravention of statutory requirements, including town planning and title deed conditions and conditions of establishment;
  8. tenure (i.e. freehold or leasehold, giving the term);
  9. a high level summary of actual tenants' leases or sub-leases;
  10. approximate age of the buildings;
  11. present capital value in existing state;
  12. terms of any intra-group lease on property occupied by the group (identifying the properties);
  13. any other matters which could significantly affect the value (including any assumptions and any information on contamination, if any); and
  14. source of information and verification thereof;
- (ii) state the name, address and professional qualifications of the valuer;
- (iii) be dated the day on which the Disclosure Document is submitted for formal approval and state the effective date at which each property was valued. The latter must not be more than 6 months prior to the date of publication of Disclosure Document and must contain a statement confirming that there have been no changes in circumstances, since the effective date that would affect the valuation. If this statement cannot be made, the valuation must be updated;
- (iv) state whether the valuation is based on either open market value or, if necessary, depreciated replacement cost subject to adequate profitability;
- (v) state any assumptions, underlying the valuation and, where open market value is the basis of valuation, identify any qualifying words to be applied to the definition of open market value and state reasons for the adoption of any such qualification;
- (vi) where the directors have required a valuation of the benefit or detriment of contractual arrangements in respect of property or where there is thought to be a benefit in any options held, show such valuations separately and include a reconciliation of the costs and values; and
- (vii) in cases where directors have been beneficially interested, whether directly or indirectly, in any acquisition or disposal of any of the properties during the two years preceding the valuation, contain details of the nature and extent of such interests and the date of the

transactions and the prices paid or received or other terms on which the transactions were effected. Alternatively, the information on beneficial interests of directors, whether direct or indirect, may be given elsewhere in the pre-listing statement or circular.

## **9.5 Valuations of property in course of development**

Where the valuation is in respect of land currently being developed or in respect of which definite development plans have been formulated for execution in the near future, the following additional information should be given in the summary valuation report required in terms of Section 9.4(c):

- (a) whether planning consent has been obtained, and, if so, the date of such consent and whether there are any material or onerous conditions attached to such consent;
- (b) the date when the development is expected to be completed and any estimate of letting or occupation dates;
- (c) the estimated total cost of carrying out the development including, without limitation, the cost of financial carrying charges, letting commissions, or (where part of the development has already been carried out) the estimated cost of completing the development similarly;
- (d) the open market value of the land and buildings in their existing state at the date of valuation; and
- (e) the estimated capital values at current prices and on the basis of current market conditions:
  - (i) after development has been completed; and
  - (ii) after completion and letting of property.

## **9.6 Valuation of property occupied for purposes of business**

A property which is occupied for the purposes of a business should normally be valued at open market value for its existing use. Where open market value for an alternative use significantly exceeds this basis, the alternative use valuation should be stated but the costs of cessation and removal should be estimated by the directors and shown in the valuation report.

## **9.7 External property**

If the company owns an external property that property must be stated separately, its basis of valuation clearly identified and a valuer's report given.

## **9.8 Rentals used in valuations**

In respect of each property which is rented out by the company, the current net annual rent and the estimated future net annual rent at a named date (where this differs significantly) must be included in the valuation report, based on its current open market rental value.

## **9.9 Other general matters**

Where a valuation is referred to in the Disclosure Document, a Category 1 circular or a circular relating to a transaction with a related party, a copy of the valuation report must be made available for inspection.

#### **9.10 Summary of valuations**

The valuation report must include a summary of the number of properties and the aggregate of their valuations must be split to show the separate totals for the freehold and leasehold properties. Negative values must be shown separately and not aggregated with the other valuations. Separate totals should be given for properties valued on an open market basis and on a depreciated replacement cost basis, and for any external properties.

## CHAPTER 10 - Registered Advisers

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### 10.1 General

This section sets out the requirements relating to Registered Advisers and sets out the eligibility and continuing obligations for BSE registered advisers.

Only Advisers approved by the BSE and recorded on the 'BSE Register for Registered Advisers' may act as an adviser for an issuer for listing related matters or an applicant applying to list on the BSE.

A Registered Adviser must give an undertaking to the BSE that it accepts certain responsibilities. These responsibilities, requirements and eligibility criteria are detailed in this section.

### 10.2 Sponsors and sponsoring brokers

The BSE needs to ensure that all applicants and listed companies satisfy the BSE Listings Requirements. In order to provide the BSE with a degree of comfort that these conditions are complied with efficiently, companies are required to appoint a sponsoring broker for their initial listing applications as well as a sponsor for their continuing obligations as a listed company.

- (a) To be recorded on the BSE Register of Advisers as a sponsor, an applicant should be a member firm of the BSE, an Investment Bank, a key person of a Company listed on the BSE or any other institution of professional advisors. The applicant must meet the following criteria;
  - (i) be registered in Botswana
  - (ii) have the necessary infrastructure facilities such as adequate and suitable office accommodation , necessary equipment and staff resources
  - (iii) Have at least one staff member who possesses a qualification which makes them eligible to act as a company secretary in a public company in accordance with the requirements of the Companies Act
  - (iv) Have at least one staff member who has experience in the preparation of at least one additional listing and/or corporate action application on behalf of a company listed on a recognised Exchange.
  - (v) Have at least one staff member who has been certified as having successfully attended a BSE workshop on the Listings Requirements unless exempted ;
  
- (b) To be recorded on the BSE Register of Advisers as a Sponsoring Broker, an applicant must, in addition to satisfying the criteria in 10.2 (a) above, also;
  - (i) Be a stock broking member of the BSE,

- (ii) Have at least one staff member who has gained experience in the preparation of at least one initial listing application on behalf of a company listed on a recognised Exchange.
- (iii) Be licensed and in good standing with the NBFIRA

**(c) Responsibilities of a sponsor**

The sponsor shall:

- (i) communicate and deal directly with the BSE on all matters arising in connection with continuing obligations of a listed company;
- (ii) ensure that the issuer is advised on the application of the Listing Requirements and be satisfied that the issuer is not in breach of such Requirements;
- (iii) be satisfied that, where an issuer prepares Listing Particulars or a circular under Chapter 4 of these Requirements which contains assumptions, that such assumptions have been made after due and careful enquiry by the directors of the issuer;
- (iv) obtain the approval of the BSE for the Disclosure Documents and Circulars as well as for waivers where applicable;

**(d) Responsibilities of a sponsoring broker**

The sponsoring broker shall:

- (i) communicate and deal directly with the BSE on all matters arising in connection with applications for initial listing;
- (ii) Prepare and lodge with the BSE the formal application for listing and all the documents supporting the application;
- (iii) be satisfied, to the best of his knowledge and belief, having made due and careful enquiry of the issuer and its advisers, that the issuer has satisfied all relevant conditions for listing, and is suitable to be listed;
- (iv) be satisfied that the directors of the issuer appreciate the nature of their responsibilities and can be expected to honour their obligations under these Listings Requirements and the Directors' Undertaking to the BSE;
- (v) be satisfied that, where an issuer prepares Listing Particulars under Chapter 4 of these Requirements which contains assumptions and/or profit forecasts or estimates, such forecasts or estimates have been made after due and careful enquiry;
- (vi) obtain the approval of the BSE for the Disclosure Documents as well as for waivers where applicable;
- (vii) Complete and submit **Appendix 3G**.

### 10.3 Legal advisers

The legal adviser is responsible for advising and guiding an issuer on its responsibilities under the Listings Requirements and the applicable laws.

- (a) To be recorded on the BSE Register as a legal advisor, an applicant must meet the following criteria;
  - (i) have the necessary infrastructure facilities such as adequate and suitable office accommodation , necessary equipment and staff resources
  - (ii) be a firm which has at least one partner or director who has been admitted to the membership of the Law Society of Botswana.
  - (iii) Have at least 1 qualified attorney excluding the partner or director referred to in (ii) above, who has practised corporate law, preferably having experience dealing with a stock exchange.
  - (iv) All persons offering legal advisory services must be certified as having attended a BSE workshop on the Listings Requirements unless exempted;

#### **10.4 Corporate Finance advisers**

The Corporate Finance Adviser is responsible for reporting and giving an opinion on assumptions made, forecasts and estimates prepared by listed companies which will assist investors to make a determination on the fairness of the price of the security.

- (a) To be registered as a corporate finance adviser by the BSE an applicant must be a corporate or partnership, and meet the following criteria;
  - (i) Be registered in Botswana
  - (ii) Be registered with NBFIRA as an Investment Adviser
  - (iii) have the necessary infrastructure facilities such as adequate and suitable office accommodation, necessary equipment and staff resources
  - (iv) Have at least 1 qualified executive having at least 5 years' experience in corporate finance, financial analysis, valuation of companies, financial forecasting or a related field.
- (b) Only registered corporate finance advisers are permitted to provide professional services to BSE listed companies on matters relating to their listing, including the following;
  - (i) Preparing profit forecasts and estimates
  - (ii) Providing independent opinions on profit forecasts and estimates
- (c) Corporate Finance advisers must be independent of the client company as defined in these Requirements.

#### **10.5 Reporting Accountants and Auditors**

The Reporting Accountant is responsible for the preparation of the accountant's report as required by the listing rules whilst the Auditor is responsible for expressing an opinion on the audited financial statements.



- (a) To be registered as a reporting accountant and/or an Auditor, applicants must meet the following criteria;
  - (i) have the necessary infrastructure facilities such as adequate and suitable office accommodation , necessary equipment and staff resources
  - (ii) be a firm registered in Botswana engaging in the provision of accounting and/or audit services. The firm must be registered and in good standing with BICA and/or BAOA.
  - (iii) employ at least 2 qualified executives (at least one of whom should be at the level of Partner) who have the requisite qualification and have 5 years of experience in accounting and/or auditing.
  - (iv) must have at least one staff member (at level of partner) who has been confirmed by BICA and/or BAOA as being qualified to report on and/or audit specific sectors (such as Banking, Insurance etc.) in which the client company operates.
  
- (b) Only registered Reporting Accountants and Auditors are permitted to provide professional services to BSE listed companies on matters relating to their listing, including the following;
  - (i) Reporting accountants:
    1. appointed to report on the information set out in Section 4.2, or in any other instance where the BSE requires a report to be presented in a circular,
    2. Provide advice to directors on the pro forma financial information as to whether the pro forma financial information has been compiled, on the basis required by the Listings Requirements;
  - (ii) Auditors:  
Audit the accounts of applicants for listing and listed companies and provide opinion thereon.
  
- (c) Reporting accountants and Auditors must be independent of the subject listed company as defined in the relevant industry standards.

## **10.6 Property Valuers**

The Property Valuer is responsible for the preparation of property valuation reports for listed companies and transactions in respect of property as required by the BSE Listings Requirements.

- (a) To be registered by the BSE as a property valuer, an applicant must meet the following criteria;
  - (i) have the necessary infrastructure facilities such as adequate and suitable office accommodation , necessary equipment and staff resources

- (ii) be a firm or company registered in Botswana engaging in property valuation services. The firm must be registered and in good standing with the Real Estate Institute of Botswana (REIB).
  - (iii) employ at least 2 qualified executives (at least one of whom should be at the level of a Partner or Director) who have the requisite qualification and have 5 years of experience providing property valuation services.
- (b) Property Valuers must be independent of the client company as defined in these Requirements.

### **10.7 Advisers deemed to be Insiders**

An adviser to a listing and/or listed company will be deemed to be an insider and any Information that is disclosed to them in the performance of their duties as described in this section must not be transmitted to a third party except as per the rules pertaining to treatment of inside information. To this end, stock broking members of the BSE who intend offering sponsoring services must be able to demonstrate to the BSE that they have sufficient systems which separate dealing and sponsoring activities to avoid insider trading.

### **10.8 Process for becoming a registered adviser**

- (a) An applicant seeking to be listed as a registered adviser must complete and submit to the Exchange an application form which is available on the BSE website.
- (b) a cheque made payable to Botswana Stock Exchange in respect of a non-refundable application fee of BWP250 must be included with the application.
- (b) The BSE reserves the right to request any other information, documentation or confirmations from the applicant or other persons as it might require in order to progress the application.

### **10.9 Renewal of registration**

- (i) The validity of the registration shall be effective for a period of 12 months at the expiry of which it may be renewed for a further period
- (ii) Renewal of registration shall be subject to;
  - (i) an evaluation of the performance of the registered adviser, and
  - (ii) Attendance of a BSE refresher workshop on Listings Requirements, held within 12 months prior to the renewal application, by at least 1 staff member of the applicant
  - (iii) Payment of a renewal of registration fee of BWP250

## CHAPTER 11 - Sanctions

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### 11.1 Scope of section

This section sets out the authority of the BSE regarding its powers to impose sanctions on Listed Companies and Registered Advisers for violating these requirements.

### 11.2 Sanctions on listed companies

#### (a) Transfers to the Default Board

In the event of failure to publish financial statements or upon receipt of a qualified audit opinion by any issuer whose securities are listed on the BSE, the BSE shall immediately transfer the securities of such issuer to the 'Default Board'.

- (i) In the event the securities of a listed company are transferred to the default board, the listed company shall be informed in writing, of its transgression and that its securities have been transferred to the Default Board.
- (ii) A penalty of P500 per day shall accrue against a listed company for every calendar day that its securities are on the default board commencing on the third (3rd) calendar day the company is on the default board. If any listed company's securities are on the default board, the maximum penalty which can accrue shall be BWP150, 000. Listed companies with securities which are suspended from trading shall not be charged the penalty.
- (iii) The Securities shall be transferred out of the Default Board upon the listed company complying with the relevant Listing Requirements.
- (iv) If the securities continue to be on the Default Board for a period in excess of six (6) months from the date of transferring the Securities of the listed company to the Default Board, the BSE shall refer the matter to the Listing and Trading sub-Committee for a determination.
- (v) The Listings and Trading sub-Committee shall enquire into the matter and may take either of the following decisions;
  - 1. Grant time for the listed company to comply with the requirements subject to a suspension being imposed on the company's securities if it does not comply within the stipulated period
  - 2. Suspend the Company forthwith pending a decision to terminate the listing of the company's securities on the BSE.

#### (b) Sanctions for other offenses

- (i) If a listed company is found to have failed to comply with other Listings Requirements, the BSE shall write to the company requesting

a response showing cause for the lapse and why the BSE should not take further action against it for the contravention of the Listings Requirements.

- (ii) On receipt of the response from the listed Company, the matter shall be referred to the Listings and Trading sub-Committee. The sub-Committee shall consider the reasons given for the contravention and decide to apply any or all of the following sanctions if they find the company guilty of the contravention;
  - 1. A written warning to the company,
  - 2. A written warning for publication on X-News and/or a national newspaper the cost of which shall be borne by the company,
  - 3. A fine not exceeding BWP150,000,
  - 4. Suspension of the company's securities from trading, or
  - 5. Termination of the company's listing from the BSE.
- (iii) When a company's listing is suspended and the affected company fails to take adequate action to obtain the restoration thereof within the period stipulated by the Committee, , the BSE may terminate the listing.

### **11.3 Procedure for Termination of listings**

The BSE may delist securities of a company if the company has been found to be in contravention of these Requirements. The procedure for delisting is as follows;

#### **(a) Public notice of intention to delist**

The BSE shall make an announcement on X-News and in one national newspaper stating the Exchange's intention to delist the Company and the reasons for the decision. The cost of the announcements shall be borne by the company.

#### **(b) Time period of making representation**

A period of twenty one (21) days from the date of the notice, shall be given to any person(s), who may be aggrieved by the proposed delisting to make representations to the Exchange.

#### **(c) Consideration of representations**

The BSE Listings and Trading Sub-Committee shall consider the representations, if any, made by the company and any other person in response to the notice prior to issuing a delisting order. The decision to issue the delisting order shall depend on;

- (i) The nature and extent of the transgression,
- (ii) Representations made by the company as to how it will comply with the Listings Requirements

- (d) The BSE may decide to extend the suspension of the company in order to give the company an opportunity to comply.

**(e) Public notice after Delisting Order**

Where the BSE issues a delisting order, it shall;

- (i) Forthwith publish a notice of the delisting on X-News and in one national newspaper. The cost of the notice shall be borne by the company,
- (ii) Inform all other stock exchanges where the shares of the company are listed, about the delisting and the surrounding circumstances that warranted the delisting.

**(f) Referral to NBFIRA**

The BSE shall refer a delisted Company and its directors to NBFIRA for any relevant action as may be applicable.

**11.4 Ban on seeking listings**

Where a company has been delisted by the BSE, the company, its directors and the companies which are promoted by any of them shall not directly or indirectly be materially associated with a company seeking a listing on the BSE for a period of ten (10) years from the date of such delisting.

**11.5 Sanctions against Registered Advisers**

- (a) In the event the BSE suspects that a Registered Adviser (Adviser) may be in breach of its responsibilities, the BSE shall conduct a preliminary investigation to establish if there is any transgression.
- (b) On conclusion that the Adviser may be in breach of its responsibilities, the BSE shall report such findings to the Adviser's Regulator for a determination. For purposes of this Section, Regulators for the Advisers shall be;
  - i) for Sponsoring Brokers and Sponsors it shall be the BSE;
  - ii) for Legal Advisers it shall be the Law Society of Botswana;
  - iii) for Corporate Finance Advisers it shall be the Non-Bank Financial Institute Regulatory Authority (NBFIRA);
  - iv) for Reporting Accountants and Auditors it shall be BICA and BAOA; and
  - v) for Property Valuers it shall be the Real Estate Institute of Botswana.
- (c) Depending on the outcome of the findings received from the Adviser's Regulator, the BSE may impose any one or more of the following penalties;
  - i) a written warning to the Adviser;
  - ii) a written warning to be published, the costs of which shall be borne by the Adviser;
  - iii) suspension of the Adviser's registration status for a period to be determined; or
  - iv) termination of the Adviser's registration.

- (d) If at any time disciplinary action and/or sanctions are imposed on an Adviser by their industry Regulator, the BSE shall suspend the Adviser's registration status pending review of the reasons for the regulator's sanctions.

### **11.6 Publication of sanctions**

No listed company or Registered Adviser or any director or officer of such entities will have any cause of action against the BSE or any member thereof, or against any person employed by the BSE or the Committee for damages arising out of the sanctions imposed by the BSE and publication of any statement made in terms of these Requirements.

# CHAPTER 12 - Botswana Code of Corporate Governance

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## SECTION I – INTRODUCTION AND BACKGROUND

### 1. The Botswana Milieu

Botswana has a small population of approximately two million people, most of whom can read and write English and Setswana. The literacy level is estimated to be approximately 60%.

A key focus of the Botswana government is the economic diversification and empowerment of its citizens. Botswana has the highest credit rating in Africa. The good governance of companies in Botswana is critical in order to continue to attract and retain capital investment, particularly foreign capital investment.

Botswana has no accounting standard of its own and has adopted the International Financial Reporting Standards. Most Companies are economically dependent on South Africa from a trading point of view and many of the larger entities are state owned enterprises. In regard to the latter, the appointments to boards are usually by the relevant minister.

The Botswana Stock Exchange is relatively small, with the largest entities being financial institutions carrying on business in Botswana.

While the main source of income in the country is the mining of diamonds, tourism is also a huge contributor. Botswana is also dependent, to a large degree, on South Africa for its imports.

There are important governance issues which are debated in Botswana, such as the guidance for responsible investment by trustees of pension funds, transparency, corruption, the appointment of directors, managing conflicts of interests, information technology (IT) governance, the rotation of auditors, terms of appointments for executives and directors, the boards of subsidiaries being appointed by holding companies and owner managed subsidiaries, as well as the level of remuneration for Directors, especially those seating in state owned enterprises. Botswana's carbon footprint at present is low in comparative terms and large areas have been conserved.

### 2. International Governance Trends

While it is true that the world is physically round, Botswana, as all other countries in the world, operates in a flat, borderless electronic world. Capital will flow towards where there is good governance and away from where there is poor governance. It also flows 24/7 with the click of a mouse.

Certain governance trends have become universal and are contained in this Code. A large pool of capital today is in the hands of pension funds around the world and pension funds have become a large shareholder of the great multinational companies.

The trustees of these pension funds are not swayed by deprivation or hardship in any area, but have an onerous duty to make an informed assessment of the sustainability of the business of a company before acquiring the equity of that company for the benefit of the funds' ultimate beneficiaries – their future pensioners.

### **3. Global Crises**

Companies at present are operating in the context of the following milieu; the global financial crisis; the climate change crisis; ecological overshoot, being sustainability speak for the fact that individuals, companies, governments and other entities have all used and continue to use the natural assets of planet earth faster than nature can regenerate them; revolutionary and evolutionary transparency; greater expectations from stakeholders and population growth.

Companies have operated for the last 150 years on yesterday's economic model, which was based on two false assumptions. Firstly, that nature had limitless resources. This is false, as nature's assets – land, air, water, coal, oil, wood, etc, are all finite.

Secondly, the assumption was that planet earth had an infinite capacity to absorb waste. This, too, was false, as the landfills around the world do not disappear. The matter dumped in them degrades and toxifies the land and fresh waters of planet earth. In consequence, at present, the planet needs at least 20% more of its natural asset capacity to sustain the seven billion people living on it.

According to the United Nations, there will be another two billion people on the planet by 2045. There are already food security problems and fresh water is scarce in many countries today.

Having regard to all these circumstances, it is clear that business cannot be conducted as usual and companies have to learn to make more with less. It is in this context that governance, how companies are directed and managed, strategy, the way companies plan short- and long-term to thrive and the sustainability issues relevant to the business of the company, have become inseparable.

For example, access to fresh water has to be an essential element in the long-term strategy of a beverage manufacturer. One of the greater expectations of stakeholders is for companies to be and be seen to be good corporate citizens.

### **4. Internal Audit**



The internal audit profession has changed profoundly over the last 10 years. The internal auditor has become central in the question of good governance. The internal auditor today is a highly professional and skilled individual that is central to the combined assurance of management, internal audit and external audit. These are the three defences of the nonexecutive director. Otherwise, he/she is at the mercy of management.

Further, the board has to certify in the Annual Financial Statements that the internal controls of a company are adequate. Consequently, the international trend is for the internal auditor to give a written assessment of the adequacy and effectiveness of controls to the board and of financial controls to the audit committee, which in turn reports to the board.

## **5. Remuneration**

Remuneration of executives and executive directors has been the matter of intense debate around the world. The international trend is for the board, on obtaining advice and input from the remuneration committee, to set a policy for remuneration. This policy for remuneration is put to the shareholders at the Annual General Meeting for a non-binding vote of approval. This gives the board a sense of the acceptance or otherwise of the policy to remunerate its executives.

## **6. IT Governance and IT Security**

The information systems of a company are now pervasive. They are no longer used only to enable a company to work more efficiently. They are in the very fabric of the business of a company. The information system has to be aligned with the long-term strategy of the company, otherwise the strategy cannot be achieved. Further, IT security is critical because of the company's confidential information. Therefore, there is a focus worldwide on IT governance and IT security.

## **7. Dispute Resolution**

As a result of the electronic age, contracts are performed with an exchange of e-mails and across borders. When disputes arise, many legal problems such as which substantive law or procedural law should be applied. Further, the judicial systems around the world have not been able to keep pace with the fast electronic conclusion of commercial transactions. Consequently, the international trend is that part of the duty of care of a director is to ensure that when a dispute arises, it is resolved as efficiently, expeditiously and effectively as possible. In consequence, dispute resolution clauses should be contained in employment, customer and supplier contracts.

## **8. Corporate Reporting**

Corporate reporting is not what it used to be. Trustees of pension funds and directors of financial institutions have a duty to make an informed assessment of the sustainability of a business before investing their ultimate beneficiaries' money in the equity of a company. This cannot be achieved by reading a financial report only.

The trend worldwide is towards integrated reporting, that is, the integration of the non-financial and the financial and vice versa. To this end, in July 2010, the International Integrated Reporting Council was formed, one of its purposes being to publish a discussion document on a framework for integrated reporting which was published on 12 September 2011. A draft framework was published on 16 April 2013 and Version 1.0 of the framework will be published on 5 December 2013 and can be accessed at the [iirc.org](http://iirc.org).

## **9. Gender**

For the word “chairman”, one should also read chairperson and chairwoman. For the words “he”, “his” and “him”, one should also read she, hers and her.

## **10. Corporate citizenship**

Corporate citizenship must be distinguished from corporate social investment, corporate social responsibility and sustainability. Corporate social investment is a matter of philanthropy because it involves a percentage of profit that a company donates to social causes. Corporate social responsibility is in the main concerned with managing a business’s impacts on society. Sustainability involves a business approach of embedding sustainability into long term strategic planning to give a company a competitive edge without unduly compromising short term profitability and cash flows.

Corporate citizenship is defined in King III as “Responsible corporate citizenship implies an ethical relationship of responsibility between the company and the society in which it operates. As responsible corporate citizens of the societies in which they do business, companies have, apart from rights, also legal and moral obligations in respect of their economics, social and natural environments. As a responsible corporate citizen the company should protect, enhance and invest in the well-being of the economy, society and the natural environment.”

## **11. Conclusion**

It can be seen that the establishment of a corporate governance code for Botswana is timeous. Governance does evolve, as society changes or there are crises in the world, such as the global financial crisis.

Notwithstanding, each country does need to develop its own corporate governance code, because of the special circumstances in each country. It is for this reason that we have endeavoured to set out the special circumstances involving Botswana above.

It is the earnest hope of the Committee who has worked on this Code that it is adopted by all companies in Botswana on an ‘apply or explain’ basis and that the Botswana Stock Exchange adopts the Code as a listing requirement. While it is directed at companies, the main principles of good governance contained in this

Report are equally applicable to all other entities, such as universities, government departments, trusts and NGOs.

## SECTION II – QUALITY VERSUS QUANTITY

1. Good governance is about quality and not about quantity. It is not a matter of a mindless compliance with a list of rules, resulting in a tick-box approach. It involves the honest application of mind to issues which are clearly understood by the board and decisions made in the best interests of the company in the maximisation of its total value. In the decision-making process, however, consideration must be given to the needs, interests and expectations of the various stakeholder groups linked to the company by its business.
2. Good governance therefore is about leadership. Leadership requires directing a company, certainly long-term, so that it is a sustainable one. Boards should direct companies so that they achieve a positive sustainable economic, social and environmental performance.
3. Sustainability is the primary moral and economic imperative of the 21st century. It involves both opportunities and risks. A board can no longer plan long-term and ignore natural capital such as land, air and water. A board can no longer operate as if natural capital were at no cost. Nature, society, business, financial aspects, technology and manufactured assets are interconnected. This interconnectivity has to be understood by boards today.
4. The concept of corporate citizenship has taken hold around the world. As each individual citizen in Botswana is expected to behave properly and not harm his or her neighbour, so it is expected that the juristic person – the company – operates as a decent corporate citizen. Around the world, integrated reporting is becoming the international trend. Companies are expected to report in clear and understandable language how they have both positively and negatively, through their operations, impacted on a community socially, environmentally and financially. It involves an holistic and integrated representation of the company's performance in terms of both its finance and its sustainability.
5. The pillars of quality governance are firstly, responsibility, which means responsibility for the assets and conduct of the company in an ethical and sustainable manner.

Secondly, the board has to be accountable to the company in an understandable manner in regard to its conduct and its decisions.

Thirdly, the board should ensure it has taken account fairly of the legitimate and reasonable needs, interests and expectations of all the stakeholder groups linked to the company in its decision-making process.

Fourthly, the board should disclose its decisions in a transparent manner, with the positives and the negatives – in short, with balance and substance over form.

6. A board has to demonstrate that it is a good steward of the company's assets and directors have to have courage, because they have a duty to take risk for reward. While the pillars of quality governance are responsibility, accountability, fairness and transparency, they rest on a foundation of intellectual honesty – that honest application of mind in the best interests of the company.

7. Ethics is part of the human character. Directors owe a duty of good faith to the incapacitated juristic person, the company, and therefore it is anticipated that they will act honestly. The way directors and management conduct themselves, however, is a matter that should be set out in a code of conduct by the company. The code of conduct must be operational rather than aspirational. It must be operational in the sense that it becomes a living document by the terms of the code being incorporated into contracts concluded by the company, particularly those of employment and supply.
8. The traceability of a company's products or services is critical. For example, if a product supplied to a company to enable it to make its products is being produced by child labour or contains some deleterious component, it could be ruinous to a company's reputation and its business. Companies, therefore, develop supply chain codes of conduct to which suppliers are required to comply. A detailed example is Walmart's Supply Chain Code, which can be sourced at [www.walmartstores.com](http://www.walmartstores.com). Traceability is part of good governance today.

## **SECTION III – THE CODE**

### **CHAPTER 1 – BOARDS AND DIRECTORS**

#### **The Principles**

1. Every company should be headed by a board of Directors which should lead and control the company. In order to do so, the board has to have a mindset that strategy, risk, performance and sustainability have become inseparable. Further, the board should ensure that at all times the company is and is seen to be a responsible corporate citizen and an ethical entity.
2. The board is responsible for the governance of risk and in this regard, should ensure that it appoints an effective and competent Board Audit Committee and, if necessary, a separate Board Risk Committee. Generally, it should ensure that all its sub-committees which it appoints have the appropriate skills to give advice to the board and add value to its decision-making process.
3. The board should adopt an inclusive approach in its decision-making process, taking account of the legitimate needs, interests and expectations of all the stakeholder groups linked to the company, but its decisions must be guided by the best interests of the company to which the board is accountable.
4. The board should be responsible for the governance of information technology and information technology security.
5. The board has to report and acknowledge the adequacy of internal controls and therefore should ensure that the internal auditor is skilled and has developed an adequate risk-based internal audit plan.
6. The board must always act on an intellectually honest basis in the best interests of the company, with a view to the maximisation of the company's total value. In this regard, the board should appreciate that its ultimate compliance officers are its stakeholders.
7. The board should elect a chairman who should be an independent non-executive director.
8. The board should identify levels of materiality over matters which they want to have control so that the paradigms in which management can manage are clear. What is material will depend on the business of each company. Some boards may maintain control over dealing with immovable property, or others, control over expenditure levels by management.
9. The board should be made up of a preponderance of non-executive directors and the majority of those non-executive directors should be independent. The CEO and the Chief Financial Officer are usually also directors of the company.
10. While directors are appointed by shareholders, the board should recommend to shareholders what skills and/or representivity is required on the board and any new board member should undergo a thorough induction programme in regard to the business of the company. This should be overseen by the company secretary.
11. The board should set up procedures whereby any director can have access to management, but only on going through the requisite procedure. Likewise, a board member should be entitled to obtain outside professional advice on any issue concerning the company, but again, only after going through an agreed procedure, which usually is with the consent of the chairman.

12. The board should ensure that a competent company secretary is appointed and that the company secretary can only be removed by a majority decision of the board. Guidance can be found in the Companies Act in this regard.
13. The board should ensure that there is an annual evaluation of its performance, both collectively and individually.
14. The board must annually review the performance of the chief executive officer who leads management in implementing the decisions of the board.
15. The board should appreciate that it can delegate various functions to sub-committees but cannot abdicate its responsibilities. The board must ensure that these subcommittees are appropriately skilled.
16. A governance framework should be agreed between the group and its subsidiary boards. If deemed sufficient for the purposes of complying with financial reporting standards, the audit committee of the holding company can act as the audit committee of subsidiary companies. Likewise, this is so for other sub-committees of the holding company's board.
17. In regard to the remuneration of executives, the board should develop a policy of remuneration after receiving input and advice from the remuneration committee, which would have benchmarked the remuneration. The policy should be put as a nonbinding vote to shareholders in general meeting.
18. Share options should not be granted to non-executive directors and great care must be taken in the pricing of share options to executives or executive directors.
19. To avoid conflicts of interest, a board should set up a remuneration committee of independent non-executive directors to make recommendations to the board, within the committee's terms of reference on the company's policy of executive remuneration.

After the non-binding vote of approval by shareholders, the board can determine specific remuneration packages for each of the executive directors and senior executives, including pension rights and any compensation payments. The remuneration committee should consult with the chairman and chief executive officer and have access to professional advice outside the company in regard to the remuneration of executives.

20. Members of the remuneration committee and all other sub-committees should be listed each year in the board's annual report to shareholders.
21. The fees paid to non-executive directors should be determined by shareholders at the annual general meeting for the year ahead.
22. In the annual report, the company should disclose the components of the total remuneration of each individual executive director and at least the three top remunerated executives who are not directors.

22.1. An executive director is an individual who is involved in the day-to-day management and/or is in the full-time employment of the company and/or any of its subsidiaries.

22.2. A non-executive director is an individual not involved in the day-to-day management and not a full-time salaried employee of the company or its subsidiaries. An individual in the full-time employment of the holding

company or subsidiaries other than the company concerned would also be considered a non-executive director unless such individual, by his or her conduct, or executive authority, could be construed to be directing the day-to-day management of the company and its subsidiaries.

22.3. An independent director is a non-executive director who :

22.3.1. is not a representative of a shareholder who has the ability to significantly influence management;

22.3.2. has not been employed by the company or its subsidiaries in any executive capacity for the preceding three financial years;

22.3.3. is not a member of the immediate family of an individual who is or has been in the past three years employed by the company or the group as an executive;

22.3.4. is not a professional adviser to the company or its group other than in his capacity as a director;

22.3.5. is not a significant customer of or supplier to the company and its group;

22.3.6. has no significant contractual relationship with the company and its group;

22.3.7. is free from any business either related to the company or its group;

22.3.8. is free from any other business or other relationship which could be seen to materially interfere with the individual's capacity to act in an independent manner.

23. At every board meeting, directors should record in writing their direct or indirect financial/business interests outside the company and if there is any interest which might be in conflict with an issue before the board, financially or otherwise, a director should declare it. The director must then decide whether or not to continue in the meeting, to participate in the decision being made by the board and/or to participate in the execution of the decision.

24. The board should meet regularly, but at least once every quarter of a financial year.

25. The board should at each meeting monitor management's implementation of the business plans and strategy approved by the board, and ensure that the CEO and his management team are competently giving effect to the board's decisions. The board should agree on key performance indicators and monitor them at each board meeting.

26. The board should ensure it is adequately informed about control and audit systems in the company and ensure that the company is complying with all legal and other requirements.

27. The board is the ultimate arbiter in the governance of risk, although the management of risk is a function for management. The board should agree on the key risk indicators, develop a risk matrix and monitor it at each board meeting.

28. The board must also ensure that there is an adequate succession plan in place for the chief executive and for board members.

29. All directors should have access to the advice and services of the company secretary.

30. All directors must come to a board meeting unfettered with an open mind in regard to the issues to be decided at the board meeting.



31. Each director should satisfy himself/herself before accepting an appointment that he/she can dedicate adequate time and effort to the matters of the board and company, in order to ensure that the duties and responsibilities owed by him/her to the company are satisfactorily discharged.
32. The chairman is the leader of the board and as such he should conduct proceedings to ensure, inter alia, that :
  - 32.1. there is effective participation of both executive and non-executive directors and a common understanding of the issues before the board;
  - 32.2. all directors are encouraged to make an effective contribution within their respective capabilities for the benefit of the company;
  - 32.3. the balance of power in the board is maintained;
  - 32.4. there is no domination by one section of the board or a director over the rest of the board;
  - 32.5. the sense or decision of directions and issues under consideration is ascertained;
  - 32.6. the board is in complete control of the company's affairs;
  - 32.7. the directors have the same understanding of the purpose of the business of the company, its value drivers, its stakeholder groups and their needs, interests and expectations.
33. One of the sub-committees should be a nominations committee, chaired by the chairman of the board, to make recommendations for new appointments to the board where it is felt there is a lack of certain skills or representivity. Where there is no nominations committee, the board as a whole should assume this responsibility and make recommendations to shareholders in general meeting. In this regard, the board should prepare a brief resumé of each director and the nature of his or her expertise in relevant functional areas and the names and registered addresses of directorships or memberships in board committees or other company boards.
34. All directors must carry out their duties with good faith, care, skill and diligence. In this regard, directors must act in terms of sections 130 and 158 of the Botswana Companies Act and be aware of the limitations on delegations of its powers as provided for in section 129.
35. Each sub-committee of the board must have written terms of references setting out its membership, resources, duties, authority, how meetings are to be minuted and how the committee will account to the board. The chairman of each sub-committee should be appropriately skilled, not the Chairman of the board and should be present at the Annual General Meeting of the company to report on its activities and to answer any questions pertinent to the activities of the committee.

A sub-committee should be chaired by an independent non-executive director and, but for the risk committee (if one is established in addition to the audit committee), should consist of non-executive directors. As a minimum there should be an audit and a remuneration sub-committee.

Specimen terms of references as guidance on usual terms in such committees can be found in the King II Report and the Practice Notes to the King III Report, but each

board must develop terms appropriate for the business of the company. Visit the King Reports at [www.iodsa.co.za](http://www.iodsa.co.za).

36. The board should have as regular agenda items the company's relationship with its identified stakeholder groups and the company's IT governance and security.
37. The board should develop a charter setting out details on its meetings, the timing and receipt of board papers, the purpose of the company, its value drivers and its major stakeholders as well as the matters set out above in regard to sub committees.
38. The board must ensure that the company complies with all laws, regulations, standards or codes relevant to its business and must set the tone at the top in regard to ethical behaviour. The board should develop a code of conduct for the company which must be operational by incorporating it by reference into employee and supplier contracts.
39. The board should report annually on a going concern basis and should record in a minute the facts and assumptions on which it relies for concluding that the company will continue as a going concern in the new financial year.

## Commentary

1. The board should monitor the relationships between the board and management and between the company and its stakeholders. The board must constantly remember that its ultimate responsibility on behalf of the company is to ensure performance by the company to maximise its total value. It must ensure that it has identified the values that drive the business and also the legitimate needs, interests and expectations of its stakeholder groups.
2. The board must always carry out its duties as the leader of the company, but with enterprise, integrity and application of mind to give a rational business judgment calls on issues before the board.
3. The board should ensure that there are adequate long- and short-term strategies developed for the business of the company. The board's other important duty is the appointment of the chief executive and sometimes the chief financial officer. Some companies, of course, might not have the luxury of doing so because of a statutory provision or shareholders' agreement which entitles a single or dominant shareholder to appoint the chief executive.

In this regard, good governance dictates that authority should always be aligned with responsibility and a board not appointing the leader of the management team who is to carry out its decisions results in a misalignment of authority and responsibility.

4. The board must know the risks involved in carrying on the business and should have key performance indicators and key risk areas clearly agreed to and which should be monitored at each board meeting.
5. The board must ensure that all the sustainability issues relevant to the business have been considered and incorporated into its long-term strategic planning. In this regard, reference is made to the long-term strategic planning which the great multinational companies are now doing, which is a clear indication of this principle. These can be seen, for example, at the following websites: [www.unilever.com](http://www.unilever.com) and [www.pg.com](http://www.pg.com).

6. It must be remembered that the board's role is a reflective one and it must not involve itself in management. Management's role is to implement the decisions of the board. As set out in the Principles, directors, although entitled to information, must go through an agreed procedure. If not, one develops a grey zone between the outside nonexecutive director and the inside executive, who is also a director.
7. If the company is listed, it should have a procedure for directors and managers not to deal in the equity of a company listed on an exchange during certain periods, such as during the time of the interim and final results.
8. The board should discuss with management in great detail the levels of materiality of reserving specific powers and authority to itself. It must not restrict management's ability to act, however, and needs to delegate to management sufficient authority to enable management to implement the strategic direction agreed to by the board.
9. The board should ensure it has a balance of power between coalface knowledge and outside skills which are relevant to the business of the company. The probability is that with this balance, better rational business judgment calls will be made. This has now become critical, because of the development of the business judgment rule as a defence to an allegation that a director has breached his or her duty of care.
10. The question of Directors and Officers Insurance should be carefully considered. It is only a matter of fairness that the company ensures that there is adequate cover for directors who act in good faith but, with the wisdom of hindsight, it is found that the decisions they made were not in the best interests of the company.
11. Being a director is a constant learning experience and directors should constantly have training on the changes in accounting standards, any changes in regard to governance and particularly the laws relevant to the business of the company.
12. Directors should turn to the company secretary for guidance on governance issues and if that fails, to an outside adviser. The latter should only occur after going through an agreed process which is usually with the agreement of the chairman.
13. The board should ensure that its subcommittees have the necessary skills to enable them to carry out their remits. It must be on the basis that these committees are advisory ones and with their advice can add value to a board in its decision-making.
14. Boards should consider asking shareholders to amend Articles of Association so that the board can actually remove a director. Failing this, the company has to call an extraordinary general meeting to remove the director, which could be costly if it is a listed company and could result in the board becoming dysfunctional if the shareholders vote by majority to retain the director. More particularly is this so if the director was an executive whose employment has been terminated by the company.
15. Before a director is appointed the shareholders should ensure that he or she has the capacity and abilities to effectively carry out his or her duties on the board. Likewise, the proposed directors should honestly assess whether or not he or she has the necessary capacity and abilities for the appointment. These criteria are not achieved by laying down the maximum number of board appointments that a person can undertake.

## CHAPTER 2 – INTERNAL AUDIT

### The Principles

1. The board should ensure that a competent corporate audit executive should be appointed to head the internal audit team. If there is no internal audit team, the board should appoint an outsourced internal auditor to carry out the internal audit function.
2. The board should ensure that a risk-based internal audit plan is developed, which can dovetail with a risk-based external audit plan.
3. The internal auditor should be present when long-term strategy is being developed in order to satisfy him or herself that controls of the strategy will be adequate and effective and that his or her function is adequately resourced.
4. The internal auditor should give a written assessment to the board at least twice a year on the adequacy and effectiveness of the internal controls. He/she should give a written assessment to the audit committee of the adequacy and effectiveness of internal financial controls. The audit committee, in turn, should give its assessment of the financial controls to the board.
5. In the context of these two assessments, the board is then better placed to make the statement that the internal controls of the company are adequate and effective.
6. The internal auditor should provide to the audit committee (or the risk committee if one is established) a written assessment of the risk management in the company.
7. The audit committee has oversight over internal audit and the corporate audit executive should have an open door policy to the chairman of the audit committee and the chairman of the board.
8. The board should at least annually conduct a review of the effectiveness of the group's internal controls and in this regard, should review all controls, including financial, operational, compliance and risk management.
9. Directors should appreciate that the internal auditor is effectively the right arm of the board, because it is a check and balance on the veracity and quality of the information in the board pack.
10. An internal audit charter should be established suitable to the business of the company. Precedents can be sourced in the King Reports.
11. The head of internal audit must be appointed by the Audit Committee, report to the Chairman of the Audit Committee and administratively to the CEO. He should have an open door to the Chairman of the Board and can only be dismissed by the Audit Committee. These factors safeguard his independence.

### Commentary

1. A good internal audit function is critical to the non-executive director. This is the one check and balance that he or she has during the year as to the veracity and quality of the management information, which is furnished to the director in the board pack.
2. The board must ensure that the corporate audit executive (CAE) has access to the chairman of the audit committee and chairman of the board.
3. The board should ensure that the internal audit function is independent from management and is objective in its provision of assurance of financial and other controls.

4. The board should ensure that the standards applied comply with those set out by the Institute of Internal Auditors (IIA) and also that the CAE and his staff comply with the provisions of the IIA's Code of Conduct.
5. The board must give due consideration to the CAE's assessment on the adequacy and effectiveness of internal controls and the audit committee's report on the adequacy and effectiveness of financial controls before signing the statement in the Annual Report that the controls in the company are adequate and effective.
6. The board should ensure that the CAE attends all audit committee meetings by way of invitation and that the CAE has the necessary attributes to challenge management on the question of complying with controls.

## CHAPTER 3 – AUDIT COMMITTEE AND AUDITORS

### The Principles

1. The board should appoint independent non-executive directors as members of the audit committee. There should be an audit committee charter setting out its duties and responsibilities and it should be chaired by an independent non-executive director and its members must be suitably skilled to fulfil its function.
2. The audit committee should ensure that it has oversight over the internal audit process and assess the internal auditor's report on the adequacy and effectiveness of controls, financial and otherwise, and should ensure that a combined assurance model is applied, namely the defences of management, internal audit and external audit.
3. The audit committee should have oversight over the risk management process, or if there is a separate risk committee, work closely with the risk committee.
4. The audit committee should ensure the expertise, resources and experience of the company's financial functions.
5. The audit committee is responsible for assessing the continued independence of the external auditor and should recommend to shareholders the appointment of the external auditor. The audit committee should also oversee the rotation of the lead auditor of the external auditor at least every five years.
6. The chairman of the audit committee should be present at the Annual General Meeting and should report to shareholders on how it has discharged its duties.
7. The audit committee should meet at least twice a year and at least once a year with only the external and internal auditors.
8. In order to fulfil its functions and carry out its duties in advising the board, it must consider and evaluate:
  - 8.1. the quality of the governance of the company;
  - 8.2. the financial report
  - 8.3. the sustainability report
  - 8.4. the external and internal audit processes;
  - 8.5. the internal financial controls;
  - 8.6. the risk management;
  - 8.7. the IT governance and security;
  - 8.8. the sustainability issues pertinent to the business of the company.
9. The audit committee should consider and evaluate the integrated report on the basis that it in substance is an holistic and integrated representation of the company's performance in terms of both its finance, sustainability and its ability to create value, short, medium and long term.

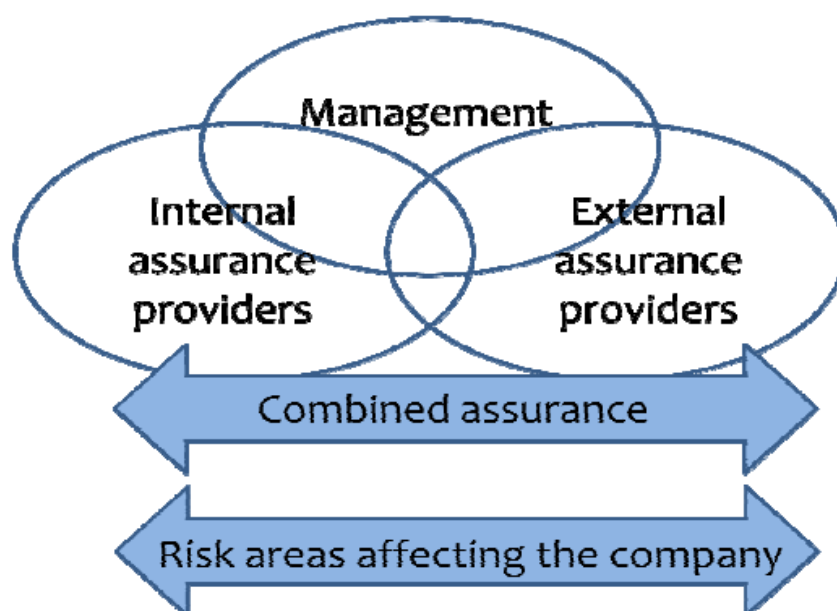
### Commentary

1. The board should ensure that the audit committee meets at least twice a year and that it in fact adds value to the board's deliberations on furnishing a fair presentation of the performance of the company. The board should also ensure that the committee collectively has the necessary skills to understand issues of financial

reporting, internal financial controls, external audit process, internal audit process, corporate law, risk management, sustainability issues, IT governance and the governance process generally within the company. Today, of course, an understanding of integrated reporting by the audit committee is critical.

2. It should have the necessary skills to have an understanding of international financial reporting standards, the GRI G3 Guidelines and if it is a multinational company, the OECD's MNE Guidelines.
3. The board should ensure that the audit committee is applying the combined assurance model which is graphically set out hereunder.

## COMBINED ASSURANCE



4. If there is no risk committee, the audit risk, financial controls, IT, sustainability, strategic and operational risks are all considered.
5. The independence of the external auditor and the audit committee recommending the company's financial statements for approval by the board.
6. The chairman of the audit committee should endeavour to have meetings with the internal and external auditors, as well as the Chief Financial Officer before the committee meeting.
7. The audit committee must carefully assess the value and quality of non-audit services and if they in any way impact on the independence of the external auditor or might be a breach of the external auditor's own code of conduct.
8. The audit committee should also review procedures to protect whistle blowers in the company and be aware that there might be irregularities which need to be reported in the Annual Report.
9. The audit committee must have oversight over the internal audit function and evaluate its effectiveness. It must also evaluate the external auditor's audit.

## **CHAPTER 4 – THE GOVERNANCE OF RISK**

### **The Principles**

1. Whilst the board is responsible for the governance of risk, it is management which must implement and monitor the risk management plan approved by the board.
2. The board must determine the levels of risk tolerance or mitigation of risk.
3. The risk committee, if there is not one, the audit committee should act as an advisory body to the board to assist the board in carrying out its duties in the governance of risk.
4. The board is to ensure that a matrix of the key risk indicators has been developed, setting out the risks involved in carrying on the business of the company and have a process for anticipating unpredictable risks.
5. The board should assess the question of risk at each board meeting and must monitor how management is implementing the risk mitigation and other mechanisms to reduce risk in the business of the company.
6. Management is accountable to the board for assurance that it has implemented and monitored the risk management plan agreed with the board and that it has been integrated into the day-to-day activities of the company.
7. As part of the company's risk, the board should ensure that the company complies with all rules, codes, standards and applicable laws relevant to the business of the company. It is management's task to ensure that this is done and should regularly report on compliance to the board.

### **Commentary**

1. The board is to exercise leadership in regard to risk management and as such is responsible for the governance of risk.
2. The company can appoint a separate risk committee to evaluate risk in the company or it can charge the audit committee to do so in an advisory capacity to the board.
3. The risk management policy must be known throughout the company and implemented by management on an on-going basis.
4. The board should, of course, determine the levels of risk tolerance, both positively and negatively. By this is meant that when a business opportunity arises, if the risks are clearly understood, the company can take that decision in regard to the business opportunity with greater comfort.
5. Whilst the board is responsible for the governance of risk, it is management's responsibility to manage risk. Consequently, management is accountable to the board for designing, implementing and monitoring the risk management policies and integrating it into the operational activities of the company.
6. The board should, at each meeting, monitor the key risk areas and the risk matrix which should be developed.
7. The board should also consider the issues of anticipating unpredictable risks, the avoidance of risk, the mitigation of risk, the transferring of risk, the tolerance of risk, exploiting risk and terminating an activity creating risk.
8. The board should be aware that the company is operating in the context of crises which create risks. The global financial crisis, the crisis of climate change, that the



natural assets of planet earth are being used faster than nature's capacity to regenerate them and population explosion.

Add to this radical transparency and greater expectations from stakeholders and it will be seen that a business cannot be carried on as usual. Companies have to plan to make more with less. The long-term strategic plans of some of the world's great MNEs reflect a change of mindset by carrying on business as unusual.

## **CHAPTER 5 – THE GOVERNANCE OF INFORMATION TECHNOLOGY AND INFORMATION SECURITY**

### **The Principles**

1. IT has become pervasive in the sense that the information system of the company is in the very fabric of the business of the company. As such, the board should develop an IT governance charter and should monitor compliance by management of this charter.
2. The board should ensure that the information system is aligned with the long-term strategic direction of the company. If the two are not aligned, this will prejudice the achievement of the long-term strategy of the company.
3. Management has the responsibility for implementing the IT governance framework and to ensure that there is security to prevent unauthorised use, access, disclosure, disruption or elimination and changes to the information system of the company.
4. Management has to also ensure that it protects the confidential information of the company, including personal information, of internal stakeholders which is on the IT system.
5. The board should regularly monitor and evaluate whether or not IT investments are adding value, the traceability and source of products such as software are duly authorised, the technology is appropriate and resilient enough to adapt to the long-term strategy of the company.
6. The question of IT governance and IT security is an integral part of the company's risk management and as such should be dealt with by the risk committee and if there is none, then by the audit committee, with reports to the board. These committees should ensure that an information security management system has been developed which deals with the confidentiality, integrity and availability of information.

### **Commentary**

1. The purpose of information security is to prevent the unauthorised use, access, disclosure, disruption, elimination or changes to a company's information system.
2. The board must ensure that prudent and reasonable steps have been taken to protect the company's information.
3. The board should also ensure that management has developed and implements an information security management system. Such a system includes ensuring the confidentiality of information, the integrity of information, the availability of information and the availability of information systems in a timely manner.
4. A company's information systems must be aligned with the long-term strategy of the company. This is absolutely critical because without it, the long-term strategy will not be achieved.
5. The information system should be on track to achieve the company's long-term objectives and should be resilient enough to adapt to the long-term strategy which the board has agreed to and which management has to implement.
6. The board must enquire as to whether the company is generating value from its IT investment and whether the amounts spent on IT is being measured and managed.
7. The board should also, from time to time, ensure that there is independent assurance and the quality of outsourced IT.

8. IT risk forms part of the company's risk and therefore should be dealt with by the risk committee and if there is not one, by the audit committee.
9. Personal information must be secured, as in certain countries such as South Africa, the publication of personal information could amount to a criminal offence.

## CHAPTER 6 – STAKEHOLDER RELATIONSHIPS

### The Principles

1. The board should ensure that management has an interactive relationship with the various stakeholder groups linked to the company. The board should not be satisfied with only proactive relationships in an endeavour to enhance the reputation of the company and should certainly not be satisfied with only reactive relationships.
2. Management should constantly be seeking to understand the legitimate and reasonable needs, interests and expectations of the various stakeholder groups and advise the board thereof, which must, if necessary, make changes to the long-term strategic direction of the company or the way in which the company is being managed.
3. This interactive relationship is critical for the understanding of the needs, interests and expectations of stakeholders, so account can be taken of them in the decision-making process.
4. The communication with stakeholders must be transparent, with substance over form being the criterion.
5. The management of the company and directors spend their time building relationships with stakeholders and if any dispute arises, this can be destructive of that relationship. It is generally regarded as part of the duty of care of a director to ensure that disputes are resolved as effectively, efficiently and as expeditiously as possible. In this regard, the board should ensure that there is an adequate alternative dispute resolution clause contained in employment, customer and supply contracts. A precedent of an acceptable dispute resolution clause is Annex A to this Code.

### Commentary

1. All companies today operate on the basis of the inclusive approach to governance. In short, this means the board identifies the stakeholder groups linked to the business of the company and what their legitimate needs, interests and expectations are. These are then taken into account in the board's decision-making process. It is to be noted that the board is not accountable to these stakeholder groups, but takes account of their needs, interests and expectations in the decision-making process.
2. The guide for the board must always be, however, to make a decision in the best interests of the company, for the purpose of the maximisation of the total economic value of the company.
3. The company must ensure that management has an interactive relationship with its various stakeholder groups. It is by this means that management learns of the needs, interests and expectations of stakeholders and can adjust the way the business is being managed to maximise the benefits from that relationship.
4. Further, the board might have to steer the strategic direction of the company differently when it learns of these legitimate needs of the various stakeholder groups.
5. It is critical to have this interactive relationship because companies do not always perform increasingly successful. Performance goes through peaks and valleys. When the performance of a company is in a valley, it is critical to have the support of the

company's stakeholders in order to resurrect the company and return it to a successful organisation.

## CHAPTER 7 – CORPORATE REPORTING

### The Principles

1. Corporate reporting is not what it used to be. The major providers of capital today are financial institutions and pension funds and in order for the directors and trustees to discharge their obligations, they need to make an informed assessment of the sustainability of the business of a company before investing the funds' beneficiaries' money in the equity of that company.
2. They cannot make this assessment merely from the financial reports following international financial reporting standards.
3. It is for this reason that many companies around the world are voluntarily filing integrated reports, which give an holistic and integrated representation of the company's performance in terms of both its finance and its sustainability.
4. Responsibility, accountability, fairness and transparency demands that the impacts which the company's operations have on society and the environment should be told to the stakeholder groups linked to the company in clear and understandable language.
5. Corporate citizenship implies an ethical relationship of responsibility between the company and the society in which it operates. Corporate social investment is just one manifestation of corporate responsibility.
6. Historic information in the integrated report should be independently assured.
7. Integrated Reporting is the international trend as witnessed by the issue of the international IR framework on 12 September 2011 and the draft framework of 16 April 2013. The annual financial statement and a company's sustainability report can be online. The IR will highlight the material financial and non-financial aspects of the company and show how the collective mind of the board has been applied to the long term sustainability of the business of the company. The IR should be written in clear and understandable language so that users can make an informed assessment of whether or not the company is going to sustain value creation.

### Commentary

1. On 12 October 2010, leading accountants in the world met in Geneva under the auspices of UNCTAD (United Nations Committee on Trade and Development). One of the important conclusions drawn by the world's leading accounting bodies and accountants was that financial reporting in the new world in which we find ourselves, does not give the stakeholders a fair representation of what is happening in a company.
2. At the World Congress of Accountants in Kuala Lumpur, from 9 – 11 November 2010, 6,043 accountants from 139 countries drew the conclusion that integrated thinking was the way forward. By this is meant that a company should incorporate the resources used by it, its relationship with its stakeholders, its business model, its output and the latter's impact on the stakeholders and society, the environment and the economy in its long term strategy.

In preparing an integrated report, the material financial and nonfinancial factors which have impacted and will impact on society, the environment and the economy

should be set out in clear, concise and understandable language. In this regard, attention is directed to the Global Reporting Initiative's G4 Guidelines, where materiality is a critical factor. Materiality is also critical in the IIRC's framework.

3. Further, major companies today have supply chain codes of conduct and these will require small and medium sized enterprises to furnish integrated reports in order to comply with the supply code and thereby remain a supplier to these major companies.

The major companies themselves have to ensure that they satisfy the requirements of their investors who are mainly financial institutions and pension funds, who have to make responsible investments on behalf of their ultimate beneficiaries. They can only make an informed assessment of the sustainability of the business of the company if it has this integrated information.

4. In short, the world is moving towards integrated reporting and financial reporting alone is generally accepted as not furnishing sufficient information for stakeholders to make an informed assessment about the sustainability of the business of a company.

## CHAPTER 8 – BOARD APPRAISAL

### The Principles

1. Boards should periodically appraise their own performance in order to ensure that board responsibilities are satisfactorily discharged.
2. The board should annually appraise itself in the key responsibilities, inter-alia, of:
  - 2.1. reviewing/formulating and monitoring Implementation of a sound short- and long-term business strategy which includes the sustainability issues pertinent to the business;
  - 2.2. ensuring that the CEO and management team are competent and that there is an effective CEO and senior management succession plan;
  - 2.3. securing effective information, control and audit systems;
  - 2.4. ensuring compliance with legal/ethical standards and with this Code;
  - 2.5. ensuring the governance of risks and that the prevention mitigation and tolerance of risk is adequately and efficiently dealt with by management; and
  - 2.6. fulfilling such other board functions as are vital, given the scale, nature and complexity of the business concerned.
3. There are Board Appraisal forms which may be utilised for this purpose.

### Commentary

1. When a company's board does its first appraisal, it can do it internally and aggregate the answers. Where the board finds a low score on a question, greater attention needs to be applied to that area during the next financial year.
2. After the first appraisal, it is beneficial to have an experienced outside facilitator to do board and director appraisals.
3. The appraisals should be treated seriously and effect should be given to the answers coming out of these appraisals, in the long-term better interests of the board's governance of the company.



## CHAPTER 9 – APPLICATION OF THE CODE

1. Compliance with the Code will be on an ‘apply or explain’ basis. In other words, the recommendations should be applied, but if a company decides it is in its best interests to adopt another practice, it is entitled to do so, but then must explain to its stakeholders why it has adopted another practice and why it believes it is better than the recommended one in the interests of the company. An explanations register should be maintained by the company.
2. It is also recommended that guidelines for responsible investment by financial institutions, including pension funds, in the equity of companies should be developed, so that these institutional shareowners can assess whether a company has or has not complied with this code. One of the factors they should take into account in making their investment decisions is whether or not the Code has been applied and if not, justifiably explained. They will also be evaluating the traceability of input products and the implementation of the company’s supply chain code of conduct.
3. These two market forces, responsible investment and traceability, will be more effective in ensuring compliance with the Code than legislating about governance principles and practices.
4. In addition the Botswana Stock Exchange should give consideration to making the application of the Code a listing requirement.

## **ANNEX A**

### **DISPUTE RESOLUTION CLAUSE AFSA – IOD DISPUTE RESOLUTION CLAUSE**

If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of arbitration. The reference to negotiation and mediation is a precondition to the Parties having the dispute resolved by arbitration.

A dispute within the meaning of this clause exists once one party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause. Within 10 (ten) business days following such notification, the parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the parties for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.

In the event of the negotiation between the designated representatives not resulting in an agreement signed by the parties resolving the dispute within 15 (fifteen) business days thereafter, the parties must refer the dispute for resolution by way of mediation in accordance with the then current rules of the Arbitration Foundation of Southern Africa (“AFSA”).

In the event of the mediation envisaged above failing in terms of the rules of AFSA, the matter must, within 15 (fifteen) business days thereafter, be referred to arbitration as envisaged in the clauses below.

The periods for negotiation or mediation may be shortened or lengthened by written agreement between the parties.

Each party agrees that the arbitration will be held as an expedited arbitration in Gaborone in accordance with the then current rules for expedited arbitration of AFSA by 1 (one) arbitrator appointed by agreement between the parties, including any appeal against the arbitrator’s decision.

If the parties cannot agree on the arbitrator or appeal arbitrators within a period of 10 (ten) business days after the referral of the dispute to arbitration, the arbitrator and appeal arbitrators shall be appointed by the Secretariat of AFSA, who shall administer and manage the arbitration proceedings.

The above mediation and arbitration procedures and proceedings shall be administered by AFSA.

The provisions of this clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or

mandamus pending finalisation of this dispute resolution process for which purpose the parties irrevocably submit to the jurisdiction of the High Court of Botswana.

The references to AFSA shall include its successor or body nominated in writing by it in its stead. This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

## CHAPTER 13 – Voluntary termination of listings

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### 13.1 Termination of listing on request

- (a) If a listed company intends to delist voluntarily from the Exchange, it must give existing public shareholders an exit opportunity.
- (b) The decision to delist must be approved by shareholders at a general meeting via a special resolution as defined in these requirements.
- (c) The company must first make an application, through their Sponsoring Broker, for a delisting. The application for delisting must be accompanied by a draft circular to shareholders explaining the exit option availed to them and requesting their approval of the delisting. The Circular must be accompanied by a fair and reasonable opinion on the offer price prepared by a corporate finance adviser, and must comply with the standard contents as per Chapter 4 of these Requirements and information stated in 13.1(g)(ii) in full.
- (d) While considering an application seeking approval for delisting, the Exchange shall satisfy itself on the following grounds;
  - (i) Resolution of any investor grievances by the company;
  - (ii) Payment of all outstanding fees to the Exchange;
  - (iii) Compliance with all conditions of the listing agreement with the Exchange having a material bearing on the interests of the public shareholders;
  - (iv) Any litigation or action pending against the company pertaining to its activities in the securities market or any other matter having a material bearing on the interests of its shareholders;
  - (v) Availability of sufficient funds to offer public shareholders an exit opportunity.
  - (vi) Any other relevant matter as the Exchange may deem fit to verify.
- (e) The Exchange will then give an approval conditional on shareholder approval at a general meeting as described in 13.1(b) above.
- (f) Bank Guarantee**
  - (i) Immediately after receiving approval of the shareholders for the delisting, but prior to opening of the offer, the company must submit, a Bank Guarantee in favour of the Exchange, of the total estimated amount of consideration calculated on the basis of offer price and number of equity shares outstanding with public shareholders.
  - (ii) The company shall, empower the Exchange to instruct the bank to effect payments against the value of the Bank Guarantee, to the beneficiaries in the event the company fails to do so for whatever reason;
  - (iii) Such bank guarantee shall be valid till payments are made in respect of all shares tendered.
- (g) Public Announcement stating intention to delist**
  - (i) Upon receipt of the conditional approval for delisting from the Exchange, , the company shall publish an announcement via X-News and in at least

- one national newspaper with wide circulation, stating the Company's intention to delist, and convening a general meeting of shareholders.
- (ii) The public announcement shall contain the information, in abridged format, relating to the delisting including;
1. the reason for the delisting,
  2. the offer price and how it was arrived at,
  3. Disclosure regarding the minimum acceptance condition for success of the offer,
  4. the names of the Sponsoring Broker and other intermediaries together with the helpline contact details for the shareholders.
  5. Listing details and trading data:
    - high, low and average market prices of the shares of the company during the preceding three years;
    - monthly high and low prices for the six months preceding the month of the announcement of the delisting; and,
    - the volume of shares traded in each month during the six months preceding the month of the announcement of the delisting.
  6. Present capital structure and shareholding pattern,
  7. the likely post-delisting shareholding pattern,
  8. the aggregate shareholding of persons who are in control of the company,
  9. a statement, certified to be true by the board of directors of the company, disclosing material deviation, if any, in utilisation of proceeds of issues of securities made during the five years immediately preceding the date of the announcement of the delisting, from the stated object of the issue,
  10. a statement by the board of directors of the company confirming that all material information which is required to be disclosed under the provisions of continuous listing requirement have been disclosed to the Exchange,
  11. Signature of and date by not less than two directors of the company.

#### **(h) Public Announcement giving results of General Meeting**

- (i) Within 5 days after the general meeting, the company shall publish an announcement via X-News and in at least one national newspaper with wide circulation giving the results of the meeting.
- (ii) If the delisting has been approved, the public announcement shall also contain the information, in abridged format, relating to the delisting including;
1. the timetable showing the record date, dates of opening and closing of the offer as well as payment of consideration. The record date shall be a date not later than fourteen (14) days from the date of the public announcement, on which the names of shareholders to whom the letter of offer shall be sent is determined, i.e. register is closed and trading suspended.

2. the manner in which the offer can be accepted by the shareholders,

**(i) Dispatch of Letter of offer**

The company shall dispatch the letter of offer to the public shareholders, not later than forty five (45) days from the date of the second public announcement. The letter of offer shall be attached to a form to be used by them for tendering the shares.

**(j) Duration of the offer period**

The date of opening of the offer shall not be later than fifty five (55) days from the date of the second public announcement and shall remain open for a minimum period of twenty one (21) working days during which the public shareholders may tender their shares.

**(k) Delisting Compliance Certificate**

Within seven (7) days of the closure of the offer, the Company shall inform the Exchange of the results of the offer and apply for a final compliance certificate which purpose is to declare that the company has officially been delisted having complied with all the necessary requirements.

### **13.2 Termination of Listing on request by Dual Listed Companies**

In the case of companies that are secondary listed on the BSE, the same process detailed in 13.1 shall apply with the following exceptions;

- (a) If the company will continue to trade in the primary market, shareholders must be given an option to transfer their holdings to the share register in that jurisdiction in addition to the option to sell their shares back to the company.
- (b) The approval for the delisting may be obtained following the Rules of the recognized primary exchange.

## CHAPTER 14 - Fees

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Fees are revised by the BSE Committee from time to time and are subject to NBFIRA review and approval. A copy of the latest fee schedule is available from the BSE and the BSE website here [www.bse.co.bw](http://www.bse.co.bw)