

CONSTITUTION OF

STANBIC FINANCIAL SERVICES PROPRIETARY LIMITED

UIN BW00002207780

As adopted by resolution passed on the
5th Day of March 2026

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PART I – INTRODUCTION AND INTERPRETATION

1.1. Introduction

- 1.1.1. The name of the Company shall be Stanbic Financial Services Proprietary Limited.
- 1.1.2. The Company has been established to: -
 - 1.1.2.1. to carry on in and outside Botswana, any business or activity relating to investment advisory and market maker services;
 - 1.1.2.2. do all such things as are incidental to or that the Company may think conducive to the conduct promotion or advancement of the objectives of the Company;
- 1.1.3. The Company shall be licensed by Non-Bank Financial Institutions Regulatory Authority and shall at all time comply with the licence conditions.
- 1.1.4. The Company, the Board, each Director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Act except to the extent that, as permitted by the Act, they are negated or modified by this Constitution.

1.2. Definitions

- 1.2.1. In this Constitution unless the context otherwise requires the following words and expressions have the meanings given to them in this clause:
 - 1.2.1.1. **"Act"** means the Companies Act 2003 and includes amendments and any Act in substitution;
 - 1.2.1.2. **"Amalgamation"** means an act where two companies join together to form a company, which may be one of the amalgamating companies, or may be new company, as envisaged in Section 222 of the Act;
 - 1.2.1.3. **"Annual meeting"** means the meeting of shareholders held pursuant to section 105 of the Act;
 - 1.2.1.4. **"Assets"** include property of any kind, whether tangible or intangible;
 - 1.2.1.5. **"Balance sheet date"** means such date as the Board adopts as the Company's balance sheet date;
 - 1.2.1.6. **"Beneficial Owner"** has the meaning and understanding ascribed to

it under section 2 of the Financial Intelligence Act (as amended from time to time);

1.2.1.7. **"Board"** means the directors numbering not less than the required quorum acting together as the Board of directors of the Company, and if the Company has only one director, that director;

1.2.1.8. **"Call"** means a resolution of the Board pursuant to clause 41 of this Constitution requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares referred to in the resolution held by the shareholder, and where the context requires means the obligation of a shareholder to meet the amount due pursuant to such a resolution;

1.2.1.9. **"Chairperson"** means the chairperson of the Board elected in terms of this Constitution;

1.2.1.10. **"Class" and "Class of Shares"** means a class of shares having attached to them identical rights, privileges, limitations and conditions;

1.2.1.11. **"Director"** means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company;

1.2.1.12. **"Distribution"** means:

1.2.1.12.1. the direct or indirect transfer of money or property, other than the Company's own shares, by the Company to or for the benefit of a shareholder; or

1.2.1.12.2. the incurring of a debt by the Company to or for the benefit of a shareholder; or

1.2.1.12.3. in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness or by some other means;

1.2.1.13. **"Dividend"** means a distribution as defined in Section 60 of the Act being a distribution other than a distribution to which section 66 (acquisition of Company's own shares) or section 76 restriction on giving (financial assistance) of the Act applies;

1.2.1.14. **"General Meeting"** means any meeting of shareholders, other than a meeting of an interest group;

1.2.1.15. **"Holding Company"** has the meaning set out in section 6(3) of the Act;

1.2.1.16. **"Interest Group"**, in relation to any action or proposal affecting rights attached to shares, means a group of shareholders:

1.2.1.16.1. whose affected rights are identical; and

1.2.1.16.2. whose rights are affected by the action or proposal in the same way; and

1.2.1.16.3. who comprise the holders of one or more classes of shares.

Holders of shares in the same class may fall into two or more interest groups, and one or more interest groups may exist in relation to any action or proposal;

1.2.1.17. **"Interests Register"** means a register kept by the Company at its registered office pursuant to section 186(1)(c) of the Act.

1.2.1.18. **"Major Transaction"** means:

1.2.1.18.1. the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the Company's assets before the acquisition; or

1.2.1.18.2. the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Company the value of which is more than half the value of the Company's assets before the disposition; or

1.2.1.18.3. a transaction that has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the Company's assets before the transaction.

1.2.1.19. **"Month"** means calendar month;

- 1.2.1.20. "**Office**" means the registered office for the time being of the Company;
- 1.2.1.21. "**Ordinary Resolution**" means a resolution of shareholders approved by a simple majority of the votes of those shareholders entitled to vote and voting on a question;
- 1.2.1.22. "**Ordinary Share**" means a share which confers on the holder:
- 1.2.1.22.1. the right to vote at meetings of shareholders and on a poll to cast one vote for each share held; and
 - 1.2.1.22.2. subject to the rights of any other class of shares, the right to an equal share in dividends and other distributions made by the Company; and
 - 1.2.1.22.3. subject to the rights of any other class of shares, the right to an equal share in the distribution of the surplus assets of the Company on its liquidation;
- 1.2.1.23. "**Registrar**" means the Registrar of Companies appointed pursuant to section 10 of the Act;
- 1.2.1.24. "**Secretary**" means any person performing or holding the office of the company secretary of the Company for the time being in terms of section 163 of the Act;
- 1.2.1.25. "**Securities**" has the same meaning assigned to it in the Act;
- 1.2.1.26. "**Share**" means a share in the capital of the Company the issue of and rights attaching to which are provided for by this Constitution;
- 1.2.1.27. "**Shareholder**" means a person:
- 1.2.1.27.1. registered in the register as the holder of one or more shares; and
 - 1.2.1.27.2. until such time as his, her or its name is entered in the register, a person named as a shareholder in the application for registration of the Constitution of the Company at the time of incorporation of the Company;
- 1.2.1.28. "**Share Register**" means the share register required to be kept in accordance with section 83 of the Act;

1.2.1.29. **"Solvency Test"** means a full enquiry to the financial state of the Company which will be satisfied if:

1.2.1.29.1. the Company is able to pay its debts as they become due in the normal course of business; and

1.2.1.29.2. the value of the Company's assets fairly valued is greater than the sum of the value of its liabilities fairly valued, including contingent liabilities;

For the purpose of the definition of the solvency test regard is to be had to the matters referred to in **section 4 of the Act**;

1.2.1.30. **"Special Meeting"** means a meeting called in accordance with section 106 of the Act;

1.2.1.31. **"Special Resolution"** means a resolution of shareholders approved by a majority of 75 percent, or if a higher majority is required by this Constitution, that higher majority, of the votes of the shareholders entitled to vote and voting on a question;

1.2.1.32. **"Subsidiary"** has the meaning set out in section 6(2) of the Act;

1.2.1.33. **"Ultimate Effective Control"** has the meaning and understanding ascribed to it under section 2 of the Financial Intelligence Act (as may be amended from time to time);

1.2.1.34. **"Working Day"** means a day of the week other than Saturday, Sunday or a public holiday:

1.2.1.35. **"Writing"** includes all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine.

1.2.2. Words importing the singular number also include the plural number and vice versa.

1.2.3. A reference to a person includes any firm, Company or other body corporate.

1.2.4. Words importing one gender include the other genders.

1.2.5. Expressions contained in this Constitution bear the same meaning as in the Act at the date on which this Constitution becomes binding on the Company.

1.2.6. A reference to a clause means a clause of this Constitution.

- 1.2.7. Except to the extent modified by this Constitution, the Act applies to the Company.

2. PART II - CAPITAL SHARES AND DIVIDENDS

2.1. Classes of shares

2.1.1. Different classes of shares may be issued by the Company including without limitation shares which:

2.1.1.1. are redeemable within the meaning of section 72 of the Act; or

2.1.1.2. confer preferential rights to distributions of capital or income; or

2.1.1.3. confer special, limited, or conditional voting rights; or

2.1.1.4. do not confer voting rights

2.1.2. The Company has the power to redeem a redeemable share:

2.1.2.1. at the option of the Company; or

2.1.2.2. at the option of the holder of the share; or

2.1.2.3. on a date specified in this Constitution;

for a consideration that is specified or to be calculated by reference to a formula or required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

2.2. Right to issue shares: Board and entitled persons

2.2.1. Subject to clause 2.3 of this Constitution and subject to the prior approval of the meetings of the shareholders, the Board in accordance with section 50 of the Act and subject to the pre-emptive rights contained in clause 3.7 of this Constitution may from time to time issue ordinary shares, and any other shares provided for by this Constitution, to any person at any time and in any number it considers appropriate.

2.2.2. A share is issued when the name of the shareholder is entered as the holder on the register.

2.2.3. Section 52 of the Act (which deals with the issue of additional shares pro rata to existing shareholders in accordance with their shareholding) applies to any issue of shares by the Board.

2.3. Consideration for issue of shares

2.3.1.1. Subject to clause 2.2 of this Constitution before the Board issues

shares it must determine the amount of the consideration for which the shares will be issued and the terms on which they will be issued; and

- 2.3.1.2. resolve that, in its opinion, the consideration for the shares and the terms of the issue are fair and reasonable to the Company and to all existing shareholders; and
- 2.3.2. Clause 2.3 of this Constitution does not apply to:
 - 2.3.2.1. the issue of shares that are fully paid up from the reserves of the Company to all shareholders of the same class in proportion to the number of shares held by each such shareholder;
 - 2.3.2.2. the consolidation and division of the shares or any class of shares in proportion to those shares or the shares in that class;
 - 2.3.2.3. the subdivision of shares or any class of shares in proportion to those shares or the shares in that class; and
 - 2.3.2.4. the issue of shares on the conversion of any convertible securities or the exercise of any option to acquire shares in the Company.
- 2.3.3. The consideration for which shares are issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the Company.

2.4. Shares not paid for in cash

- 2.4.1. Shares shall be deemed not to have been paid for in cash except to the extent that the Company has actually received cash in payment of the shares at the time of or subsequently to the agreement to issue the shares.
- 2.4.2. Before shares are credited as fully or partly paid up other than for cash, the Board must:
 - 2.4.2.1. determine the reasonable present cash value of the consideration; and
 - 2.4.2.2. resolve that, in its opinion, the present cash value of the consideration is fair and reasonable to the Company and to all existing shareholders, and the present cash value of the consideration is not less than the amount to be credited in respect of the shares.

2.5. Directors' certificate on consideration for issue

2.5.1. The directors who vote in favour of a resolution required under clause 3.1 of this Constitution to issue shares must sign a certificate:

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

2.5.1.2. describing the consideration in sufficient detail to identify it; and

2.5.1.3. where a present cash value has been determined in accordance with clause 2.5.1.2, stating that value and the basis for assessing it; and

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

2.5.1.5. if the shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of shares.

2.6. Directors certificate to be lodged

A copy of the directors' certificate given in respect of the consideration for the issue of shares must be filed with the Registrar for registration within 10 working days after the certificate is given.

2.7. Deemed payment other than for cash

For the purposes of clauses 2.4.2 of this Constitution, shares that are or are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.

2.8. Amount owing on issue of shares

Where money or other consideration is due to the Company on shares in accordance with their terms of issue such an amount does not comprise a call and no notice is required to be given to the holder or other person liable under the terms of issue in order for the Company to enforce payment of the amount due.

2.9. Bonus shares

Subject to the provisions of the Act, the Board may authorise the allotment to

shareholders of shares issued as fully or partly paid up from the assets of the Company.

2.10. Company paying up partly paid shares

Subject to the Company being able to meet the solvency test immediately after the distribution, the Board may authorise payment from the assets of the Company of any amount unpaid on shares already issued by the Company.

3. TRANSFER OF SHARES

3.1. Entry in register

Subject to clauses 4 to 6 of this Constitution shares may be transferred by entry of the name of the transferee in the register.

3.2. Signed transfer

A form of transfer signed by the present holder of the shares or the holder's personal representative must be delivered to the Company or to any agent of the Company who maintains the register for the purpose of transferring shares.

3.3. Form of transfer

3.3.1. The form of transfer may be in any usual or common form, or any other form approved by the Board.

3.3.2. The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the Company on the transferee.

3.4. Board's right to refuse registration of transfer

3.4.1. The Board shall, within 30 working days of the receipt of a transfer of shares by the Company, refuse or delay the registration of the transfer if:

3.4.1.1. the holder of the shares has failed to pay an amount due to the Company in respect of those shares; or

3.4.1.2. the provisions of clause 3.7 of this Constitution (or any agreement between shareholders) dealing with pre-emptive rights have not been fully complied with; or

3.4.1.3. the Board considers that to effect the transfer would result in a breach of the law; or

3.4.1.4. the Board considers that it is not in the best interests of the Company to register the transfer; or

3.4.1.5. clause 6.2 (transfer to be accompanied by certificate) of this Constitution has not been complied with, or the share transfer has not been properly executed or does not comply with clauses 4.2 (signed transfer) and 4.3 (form of transfer) of this Constitution.

3.4.2. Any resolution of the Board to refuse or delay the registration of a transfer of shares must set out in full the reason under clause 4.4 of this Constitution for doing so and must be sent to the transferor and transferee within 5 working days of the date of the resolution.

3.5. **Registration of transfer**

Subject to clauses 4.3 (**form of transfer**) and 4.4(**Board's right to refuse registration of transfer**) of this Constitution, on receipt of a duly completed form of transfer the Company must enter the name of the transferee on the register as holder of the shares, unless the Board has resolved in accordance with clause 4.4 to refuse or delay the registration of the transfer of the shares.

3.6. **Default by Transferor**

3.6.1. If a proposing transferor, after becoming bound to transfer the shares, defaults in transferring the shares, any director may execute a transfer of the share on behalf of the proposing transferor, and the Company may receive the purchase money and cause the name of the purchasing shareholder to be entered in the register as the holder of the shares.

3.6.2. The Company will hold the purchase money (subject to any lien in favour of the Company) in trust for the proposing transferor. The receipt of the Company for the purchase money will be a good discharge to the purchasing shareholder.

3.7. **Pre-emptive Provisions**

No share in the capital of the Company shall be sold or transferred by any shareholder unless and until the rights of pre-emption hereinafter conferred have been exhausted.

3.7.1. It shall be required that:

3.7.1.1. a shareholder shall not sell or transfer less than all of its shares unless accepted otherwise by the meeting of the shareholders;

3.7.1.2. every shareholder including the personal representative of a deceased shareholder or the trustee of the property of an insolvent shareholder who desires to sell or transfer any share or shares shall give notice in writing to the Board of such desire;

- 3.7.1.3. if such notice includes several shares it shall not operate as if it were a separate notice in respect of each such share, and the proposing transferor shall be under the obligation to sell or transfer all of the shares specified in such notice;
 - 3.7.1.4. such notice shall be irrevocable and shall be deemed to appoint the Board the proposing transferor's agent to sell such shares in one or more lots to any shareholder or shareholders of the Company (including the directors or any of them) at a price to be agreed upon between the party giving such notice and the Board or, failing agreement between them within 28 days of the Board receiving such notice, at a fair price to be determined on the application of either party by an independent chartered accountant of not less than ten years standing to be nominated by the Chairman of Botswana Accounting Oversight Authority; and
 - 3.7.1.5. such person, when nominated, and in certifying the sum which is the fair price for the share based on international valuation principles and including provisions and adjustments for bad and doubtful debts, shall be considered to be acting as an expert and not as an arbitrator.
- 3.7.2. The following conditions shall apply: -
- 3.7.2.1. upon the price for such shares being agreed on or determined, as the case may be, the Board shall immediately give notice to each of the shareholders (other than the person wanting to sell or transfer such shares) stating the:
 - 3.7.2.1.1. number and price of such shares and inviting each of the shareholders to whom the notice is given to state in writing within 21 days after the date of the notice whether such shareholder is willing to purchase any; and
 - 3.7.2.1.2. maximum number of such shares, where such shareholder is willing to purchase any;
 - 3.7.2.1.3. at the expiration of 21 days from the date of the notice the Board shall
 - 3.7.2.1.3.1. apportion such shares amongst the shareholders (if more than one) who have expressed a desire to purchase the same; and

3.7.2.1.3.2. as far as may be pro rata according to the number of shares already held by the shareholders respectively, or if there is only one such shareholder, the whole of such shares shall be sold to that shareholder:

provided that no shareholder shall be obliged to take more than the maximum number of shares stated in that shareholder's response to such notice;

3.7.2.1.4. upon such apportionment being made or such one shareholder notifying such shareholder's willingness to purchase, as the case may be, the party desiring to sell or transfer such share or shares shall be bound, upon payment of the said price, to transfer such share or shares to the respective shareholder or shareholders who has or have agreed to purchase the same and, in default thereof, the Board may receive and give a good discharge for the purchase money on behalf of the party desiring to sell and enter the name of the purchasers or purchaser in the share register as holder or holders of such share or shares so sold.

3.7.3. In the event of all such shares not being sold under the preceding clause within 60 days of the Board receiving notice, the party desiring to sell or transfer shall be at liberty within a further period of 30 days to sell the shares not so sold, but not a portion only, to persons who are not shareholders, provided however, that such party shall not sell them for a price less than the price at which the same have been offered for sale to the shareholders under this clause, but every such sale shall nevertheless be subject to the provisions of clause 4.

3.7.4. The costs and expenses of a transfer of shares under this clause 4 shall be borne as to one half by the selling shareholder and as to the other half by the shareholders who agreed to purchase the shares pro rata according to the number of shares purchased by them. If no other shareholder agreed to purchase the shares the selling shareholder shall pay all such costs and expenses.

4. SHARE REGISTER

4.1. Maintenance of share register

4.1.1. The Company shall maintain a share register which records all shares issued by the Company and states any restrictions or limitations on their transfer, and where any document that contains the restrictions or limitations may be inspected.

4.1.2. The Company may appoint an agent to maintain the share register.

4.2. Contents of register

4.2.1. The share register must state, with respect to each class of shares:

4.2.1.1. the names, alphabetically arranged, and the latest known address of each person who is, and each person who has within the last 7 years, been a shareholder; and

4.2.1.2. the number of shares and the class of shares held by each shareholder within the last 7 years; and

4.2.1.3. the date of any:

4.2.1.3.1. issue of shares to; or

4.2.1.3.2. repurchase or redemption of shares from; or

4.2.1.3.3. transfer of shares by or to each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

4.3. Duty to supervise register

It is the duty of the Secretary to take reasonable steps to ensure that the register is properly kept and that share transfers are promptly entered in it in accordance with clause 16 of this Constitution.

4.4. Register prima facie evidence

Subject to section 87 of the Act (**power of court to rectify register**) the entry of the name of a person in the register as holder of a share is prima facie evidence that the legal title to the share is vested in that person.

4.5. **Register evidence of rights**

The Company may treat the registered holder of a share as the only person entitled to:

- 4.5.1. exercise the right to vote attaching to the share; and
- 4.5.2. receive notices in respect of the share; and
- 4.5.3. receive a distribution in respect of the share; and
- 4.5.4. exercise the other rights and powers attaching to the share.

4.6. **Trust not to be registered or recognised**

- 4.6.1. No notice of a trust, whether express, implied, or constructive, may be entered on the register.
- 4.6.2. Except as required by law, no person will be recognised by the Company as holding any share upon trust, or holding any interest in a share whether equitable, contingent, future or partial except the absolute legal right to the entirety of the share vested in the registered holder.
- 4.6.3. The registration of a trustee, executor or administrator as a personal representative of a former shareholder does not constitute notice of a trust.

5. **SHARE CERTIFICATES**

5.1. **Application for share certificate**

A shareholder may apply to the Company for a certificate relating to some or all of the shareholder's shares.

5.2. **Transfer to be accompanied by certificate**

Notwithstanding clause 4 of this Constitution (**transfer of shares**), where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the share certificate relating to the share, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board.

5.3. Surrendered share certificate

Where shares to which a share certificate relates are transferred, and the share certificate has been sent to the Company to enable registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

6. TRANSMISSION OF SHARES

6.1. Transmission

In the event of the death of a shareholder, the survivor, where the deceased was a joint holder, or the legal personal representative of the deceased, where the deceased was a sole holder (whichever may be the case), will be the only persons recognised by the Company as having any title to the deceased's interest in the shares. Nothing contained in this clause 6.1 will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.

7. CALLS ON SHARES

7.1. Board may make calls

Subject to the terms of issue of any shares the Board may resolve to require the holders of unpaid or partly paid shares to pay all or part of the amount unpaid on the shares. The terms of the resolution of the Board will constitute the terms of the obligation to pay the call including payment by instalments. The call may be revoked or postponed at any time by the Board.

7.2. Notice of calls

7.2.1. Subject to the terms of issue of any class of shares and to the solvency test in clause 9.1, unless all the holders of a class of shares subject to a call unanimously agree, a call or the postponement or revocation of a call will apply to all the holders of shares of the class equally.

7.2.2. Notice of the call must be given to the shareholders at the time of the call, or to a subsequent holder. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder.

7.2.3. Notice of a call sent by post to a shareholder to the address recorded in the register as the address of the shareholder will be deemed to have been received by the shareholder the day following the date of the posting of the notice.

7.3. Liability for calls

- 7.3.1. The joint holders of shares are jointly and severally liable to pay all calls in respect of the shares.
- 7.3.2. If a call is not paid before or on the day appointed for payment the person from whom the sum is due will be liable to pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the Board determines either at the time of the call or subsequently.
- 7.3.3. The liability for a call which has become due and payable attaches to the shareholder for the time being recorded in the register and not a prior shareholder, notwithstanding that at the date of the call, or the date the call fell due for payment, another person was the shareholder or that the notice of the call was served on the previous and not the current shareholder.
- 7.3.4. Following registration in the register of a change of ownership of shares in respect of which a call has been made, a notice of the call is not required to be served on the new shareholder.

7.4. Agreement to differentiate calls

The Board may, on the issue of shares, by agreement with the shareholders concerned, differentiate between the shareholders of the same class as to the amount to be paid on the shares and the times of payment.

8. SUSPENSION OF RIGHT TO DIVIDENDS AND LIEN

8.1. Notice of suspension of rights to dividend

- 8.1.1. If a shareholder fails to pay any call or instalment of a call on the day appointed for payment, the Board may, at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, serve a notice in writing on the shareholder requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.
- 8.1.2. The notice must state a further date (not earlier than the expiration of 5 days from the date of service of the notice) on or before which the payment required by the notice is to be made and state that, in the event of non-payment at or before the time appointed, the right to dividends in respect of the shares subject to the call will be suspended.

8.2. Application of suspended dividends

8.2.1. All dividends which would have been payable in respect of shares which are subject to a suspension of the right to dividends must be withheld and applied by the Company to reduce the amount owing under the call.

8.2.2. The amount owing under the call, may include any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment by the shareholder under the call.

8.3. Liability not discharged by suspension of right to dividends or transfer of shares

A shareholder whose shares are the subject of a suspension of the right to dividends remains liable to the Company for all money owing under the call, and that liability is not extinguished by a transfer of the shares subject to the suspension to a third party.

8.4. Lifting of suspension of right to dividends

When the total dividends withheld and applied under clause 8.2.1 of this Constitution equal the total amount owing under the call, including amounts owing under clause 8.2.2 of this Constitution, or when the shares are transferred to a third party, the suspension of the right to dividends will be lifted and all rights to be paid dividends on the shares will resume.

8.5. Liens

8.5.1. The Company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares, for all money (whether presently payable or not) payable in respect of shares held by the shareholder, and for all other money presently payable by the shareholder to the Company on any account whatever, and also for such amounts (if any) as the Company may be called upon to pay under any statute or regulation in respect of shares of a deceased person or other shareholder, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.

8.5.2. The lien extends to all dividends from time to time declared in respect of the shares.

8.6. Sale on exercise of lien

8.6.1. The Company may sell, in such manner as the Board thinks fit, any shares on which the Company has a lien, but no sale may be made unless a sum in respect of which the lien exists is due and payable, nor until the expiration of 14

days after a notice in writing, which states and demands payment of the amount due and payable in respect of which the lien exists, has been given to the registered shareholder for the time being or the person entitled to that share by reason of the registered shareholder's death or bankruptcy.

- 8.6.2. The net proceeds of the sale of any shares sold for the purpose of enforcing a lien is to be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the shareholder in respect of which the lien existed. The residue, if any, is to be paid to the former shareholder.
- 8.6.3. A certificate signed by a director stating that the power of sale provided in this clause 8 of the Constitution has arisen and is exercisable by the Company under this Constitution will be conclusive evidence of the facts stated in the certificate.
- 8.6.4. In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 8.6.1 of this Constitution the Board may authorise any person to execute a transfer of the shares to the purchaser. The purchaser will be registered as the shareholder of the shares which are transferred and will not be bound to see to the application of the purchase money. The purchaser's title to the shares will not be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the Company exclusively. If the certificate for the shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered up.

9. DISTRIBUTIONS

9.1. Solvency test

- 9.1.1. The Board may authorise a distribution by the Company at a time, and of an amount, and to the shareholders, it thinks fit if it is satisfied on reasonable grounds that the Company will, immediately after the distribution, satisfy the solvency test.
- 9.1.2. The directors who vote in favour of a distribution must sign a certificate stating that in their opinion the Company will, immediately after the distribution, satisfy the solvency test.

9.2. Declaration of dividends

- 9.2.1. All dividends shall be authorised by the Board pursuant to section 60 of the Act with the approval of an ordinary resolution of shareholders, provided that the Board

may make payment of an interim dividend where this appears to be justified by the profits of the Company and provided the solvency test is satisfied in accordance with clause 9.1 of this Constitution;

9.2.2. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

9.2.3. The directors may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by such shareholder to the Company on account of calls or otherwise in relation to the shares of the Company.

9.2.4. No dividend shall bear interest against the Company.

9.2.5. Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheques or postal or money order sent through the post directed to the registered address of the holder, or in the case of joint holders, to the registered address of that one of the joint holders who is first named on the share register, or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or postal or money order shall be made payable to the order of the person to whom it is sent.

9.2.6. Any one of the two or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

9.2.7. All dividends unclaimed for a period not less than three years from the date of which the dividends became payable may be declared to be forfeited by the Board for the benefit of the Company. In the event of a resolution being passed providing for the Company to be wound up, such resolution may provide that any dividends unclaimed for a period of not less than three years from the date on which the dividends became payable and not previously forfeited may be forfeited by the Board for the benefit of the Company. Monies other than dividends due to shareholders will be held in trust by the Company indefinitely until lawfully claimed by the shareholders.

9.3. **Dividends payable *pari passu***

9.3.1. The Board may not authorise a dividend:

9.3.1.1. in respect of some but not all the shares in a class; or

9.3.1.2. that is of a greater value per share in respect of some shares of a class than it is in respect of other shares in that class;

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder under the Constitution of the Company or under the terms of issue of the share.

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

9.4. **Financial assistance on acquisition of shares**

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

10. PART III - SHAREHOLDERS' RIGHTS AND OBLIGATIONS STATEMENT OF SHAREHOLDERS' RIGHTS

10.1. Shareholders Register

The Company shall maintain at its registered office, a register of shareholders of the Company as provided in Section 83 (3) of the Act which shall be open to inspection, as provided in Section 83 (8) of the Act. The register of shareholders shall include an up to date record of all shareholders and from time to time, each acceptance of membership and termination of membership.

10.2. Issue of statement of rights to shareholder

10.2.1. The Company must issue to a shareholder, on request, a statement that sets out:

10.2.1.1. the class of shares held by the shareholder, the total number of shares of that class issued by the Company, and the number of shares of that class held by the shareholder; and

10.2.1.2. the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the shares held by the shareholder; and

10.2.1.3. the relationship of the shares held by the shareholder to other classes of shares.

10.2.2. A statement issued pursuant to clause 10.1.1 of this Constitution must state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.

11. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

11.1. Powers reserved to shareholders

11.1.1. Powers reserved to shareholders of the Company by the Act or by this Constitution may be exercised:

11.1.1.1. at an annual meeting or a special meeting; or

11.1.1.2. by a resolution in lieu of a meeting pursuant to section 107 of the Act;

11.1.1.3. by unanimous agreement pursuant to section 247 of the Act.

11.1.2. Unless otherwise specified in the Act or this Constitution, a power reserved to shareholders may be exercised by an ordinary resolution.

11.1.3. Unless authorized or approved by a resolution of the shareholders, the Company shall not and the Board of Directors or the officers of the Company shall not authorize the Company to:

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

11.1.3.2. issue or reduce the Company's stated capital; or

11.1.3.3. purchase, redeem or acquire any shares of the Company; or

11.1.3.4. change the financial year of the Company; or

11.1.3.5. to acquire or dispose of a shareholding in another entity, to invest otherwise in an entity, to acquire any business or to enter into any joint venture, take over or control over another entity; or

11.1.3.6. enter into an amalgamation; or

11.1.3.7. sell all or substantially all of the assets of the Company; or

11.1.3.8. make a major transaction; or

11.1.3.9. declare or pay any dividends or make any other distributions on any of the outstanding shares of the Company; or

11.1.3.10. enter into liquidation; or

11.1.3.11. acquire or dispose of any immovable property.

12. MEETING OF SHAREHOLDERS

12.1. Annual meeting

12.1.1. The Board must, in accordance with Section 105 (Annual meeting of shareholders) of the Act, call an annual meeting of shareholders to be held:

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

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

12.1.1.3. not later than fifteen months after the previous annual meeting eighteen 18 months after its date of registration.

12.1.2. The Company must hold the annual meeting on the date on which it is called to be held.

12.2. **Special meetings**

A special meeting of shareholders entitled to vote on an issue:

- 12.2.1. may be called at any time by the Board or a person who is authorised by this Constitution to call the meeting; and
- 12.2.2. must be called by the Board on the written request of shareholders holding not less than five percent of the voting rights entitled to be exercised on the issue.

12.3. **Resolution in lieu of meeting**

Subject to section 107(1) and (2) of the Act, a resolution in writing signed by all shareholders who would be entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of those shareholders. Such a resolution may consist of several documents in like form, each signed by one or more shareholders. A facsimile of such signed resolution is as valid and effectual as the original signed document.

12.4. **Chairperson of meetings of shareholders**

- 12.4.1. The chairperson of the Board, if one has been elected and is present at a meeting of shareholders, must chair the meeting.
- 12.4.2. If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of the number to chair the meeting.

12.5. **Shareholders entitled to notice of meetings**

- 12.5.1. The shareholders entitled to receive notice of a meeting of shareholders are the shareholders of the relevant class recorded in the register as registered shareholders:
 - 12.5.1.1. where the Board has fixed a date for the purpose of establishing an entitlement to receive notice, on the date so fixed; or
 - 12.5.1.2. if no date has been fixed by the Board for that purpose, at the close of business on the day immediately preceding the day on which the notice is given.
- 12.5.2. A date fixed by the Board under clause 12.5.1.1 must not precede by more than 30 working days nor less than ten working days the date on which the meeting is to be held.

12.6. Notice of meeting

Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting, and to every director and an auditor of the Company not less than ten working days before the meeting. The place of the meeting can be inside or outside Botswana.

12.7. Contents of notice

The notice referred to in clause 12.6 of this Constitution must state:

- 12.7.1. the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- 12.7.2. the text of any resolution to be submitted to the meeting; and
- 12.7.3. the postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
- 12.7.4. that the postal vote must be received by the person referred to in sub clause 12.7.3 at least 48 hours prior to the time of the meeting.

12.8. Irregularities in notice

- 12.8.1. The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings of that meeting.
- 12.8.2. Notwithstanding clause 12.8.1, an irregularity in a notice of a meeting required by clause 29 of this Constitution is waived if all the shareholders entitled to attend and vote at the meeting, do attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

12.9. Method of holding meeting

- 12.9.1. A meeting of shareholders, where notice of the meeting has been given, may be held either:
 - 12.9.1.1. by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - 12.9.1.2. by means of audio, or audio and visual communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

12.10. Adjournments

If a meeting of shareholders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

12.11. Minutes

12.11.1. The Board must ensure that minutes are kept of all proceedings at meetings of shareholders.

12.11.2. Minutes which have been signed as being correct by the chairperson of the meeting are prima facie evidence of the proceedings.

13. VOTING AT MEETINGS

13.1. Quorum

13.1.1. A quorum for a meeting of shareholders is constituted if those shareholders representing 75 % of the stated share capital of the Company or their proxies who are present or who have cast postal votes.

13.1.2. No business may be transacted at a meeting of shareholders if a quorum is not present.

13.1.3. If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the directors may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

13.2. Voting

13.2.1. Unless a poll is demanded, voting at all general meetings must be by whichever of the following methods is determined by the chairperson of the meeting:

13.2.1.1. voting by voice; or

13.2.1.2. voting by show of hands.

Such votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

13.2.2. A declaration by the chairperson of the meeting that a resolution is carried by

the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 13.2.3 of this Constitution.

13.2.3. At a meeting of shareholders, a poll may be demanded by:

13.2.3.1. a shareholder or shareholders representing not less than ten percent of the total voting rights of all shareholders having the right to vote at the meeting; or

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

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

13.2.5. If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

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

13.3. Proxies and representatives

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

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

13.3.3. A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.

13.3.4. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company Secretary on or before the start of the meeting. The chairperson may generally or in respect of any particular shareholder waive the requirements of this clause 13.3.

13.3.5. A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

14. PART IV - THE BOARD - POWERS AND DUTIES OF THE BOARD

14.1. Composition of Board of Directors

- 14.1.1. The minimum number of Directors shall be [3] and the maximum number shall be [5], the majority of whom shall be resident in Botswana.
- 14.1.2. The Board shall be appointed for a tenure of up to maximum five (5) years, renewable for another maximum period of five (5) years.

14.2. Appointment and removal by notice

- 14.2.1. The directors shall be the persons appointed from time to time as directors by an ordinary resolution of shareholders, who have not been removed or been disqualified or resigned from office under this Constitution.
- 14.2.2. A director may be removed from office at any time by an ordinary resolution of shareholders.
- 14.2.3. A notice given under clause 14.2.2 of this Constitution takes effect upon receipt of it at the registered office of the Company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by shareholders giving the notice.
- 14.2.4. A director holds office until his or her resignation, retirement, disqualification or removal in accordance with this Constitution.

14.3. Appointment and removal of directors by resolution

- 14.3.1. In addition to the appointment or removal of directors under clause 14.2 of this Constitution, a director may be appointed or removed from office by an ordinary resolution.
- 14.3.2. A resolution to appoint two or more directors may be voted on as one resolution without each appointment being voted individually.
- 14.3.3. A notice of a meeting at which the removal of a director will be considered must state that the purpose of the meeting is the removal of the director.

14.4. Disqualification

- 14.4.1. A person will be disqualified from holding the office of director if he or she is removed under this clause of this Constitution, the Act or he or she:
 - 14.4.1.1. dies; or

14.4.1.2. is under 18 years of age; or

14.4.1.3. is an un-discharged bankrupt; or

14.4.1.4. is prohibited by the Companies Act 2003 from being a director or officer or promoter or taking part in the management of the Company; or

14.4.1.5. resigns in writing.

14.5. Shareholding qualification

A director is not required to hold shares.

14.6. Powers of the Board

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

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

14.6.3. In the exercise of its powers the Board must report to and be accountable to its shareholders.

14.7. Delegation by the Board

14.7.1. The Board may by way of terms of reference delegate to a committee of the board (which shall include an audit and finance committee, a human resources and remuneration committee or such committee as may be prescribed by law), a director, or an employee of the Company, or any other person, any one or more of its powers other than the following powers of the Board or such powers which are specifically reserved by the Act or by this Constitution for shareholders:

14.7.1.1. Section 50 of the Act; (issue of shares)

14.7.1.2. Section 53 of the Act; (shareholder approval to the issue of shares)

14.7.1.3. Section 54 of the Act; (consideration for the issue of shares)

14.7.1.4. Section 58 of the Act; (distributions)

14.7.1.5. Section 61 of the Act; (issue of shares in lieu of dividends)

- 14.7.1.6. Section 62 of the Act; (shareholder discounts)
- 14.7.1.7. Section 66 of the Act; (offers to acquire shares)
- 14.7.1.8. Section 73 of the Act; (redemption of shares at the option of a Company)
- 14.7.1.9. Section 76 of the Act; (provision of financial assistance)
- 14.7.1.10. Section 184 of the Act; (change of registered office)
- 14.7.1.11. Section 224 of the Act; (manner of approving an amalgamation proposal) and
- 14.7.1.12. Section 225 of the Act (short form amalgamations).
- 14.7.2. The Board is responsible for the exercise by any delegate of a power delegated under this Constitution as if the power had been exercised by the Board, unless the Board:
 - 14.7.2.1. believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this Constitution; and
 - 14.7.2.2. has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

14.8. Directors to act in good faith

- 14.8.1. A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company, and for the respective purposes for which the powers are explicitly or impliedly conferred
- 14.8.2. If the Company is incorporated to carry out a joint venture between its shareholders the director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the Company.

15. BORROWING POWERS

Subject to this Constitution, the Act and the applicable Statutes, the Board may exercise the powers of the Company to borrow money subject to the approval by a special resolution of the shareholder and subject to prescribed limits and shall be aligned to the objects of the company as stated in this constitution.

16. PROCEEDINGS OF BOARD

16.1. Chairperson

- 16.1.1. The directors may elect any of the independent directors appointed in terms of clause 14.1.2, upon the prior approval of the Board of the Holding Company as chairperson of the Board and determine the period for which the chairperson is to hold office.
- 16.1.2. The director elected as chairperson holds that office for a period of two (2) years or until he or she resigns or the directors elect a chairperson in his or her place.
- 16.1.3. If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

16.2. Notice of meeting

- 16.2.1. A director or, if requested by a director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause.
- 16.2.2. Not less than seven days' notice in respect of ordinary meetings and two days' notice in respect of emergency meetings, of a meeting of the Board must be given to every director, and the notice must include the date, time and place of the meeting and the agenda to be discussed. The place of the meeting can be inside or outside Botswana. The agenda may be varied at any time prior to the meeting provided notice of amendment is given to all Directors and alternate Directors at least three business days prior to the meeting.
- 16.2.3. An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

- 16.2.4. Notice of a meeting may be given by any means, including by telephone, by E-Mail or by telefax. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been received by the director the day following the date the letter is posted.

16.3. Meetings of Board

- 16.3.1. A meeting of the Board may be held either:

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

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

16.4. Quorum

- 16.4.1. The quorum necessary for the transaction of business may be determined by the Board and until otherwise determined shall be the majority of the two persons, each being a Director.

- 16.4.2. No business may be transacted at a meeting of directors if a quorum is not present.

16.5. Voting

- 16.5.1. Every director has one vote.

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

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

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

16.6. Minutes

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

16.7. Written resolution

- 16.7.1. A resolution in writing, sent to all directors and signed or assented to by the majority of the directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution shall be deemed to have been passed on the date on which it was signed and delivered to the Company by the majority of the directors signing and assenting it.
- 16.7.2. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors. A fax transmission of a Director's signed resolution shall be acceptable evidence that such resolution has been signed by the Director whose signature appears on the fax transmission.
- 16.7.3. A copy of any such resolution must be entered in the minute book of Board proceedings.

16.8. Continuing directors

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

17. INTERESTED DIRECTORS

17.1. Notice of interest to be given

- 17.1.1. A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, if the Company has more than one director, disclose to the Board of the Company:
 - 17.1.1.1. if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
 - 17.1.1.2. if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- 17.1.2. For the purposes of clause 17.1 a general notice entered in the interests register or disclosed to the Board to the effect that a director is a shareholder, director, officer or trustee of another named Company or other person and is to be regarded as interested in any transaction which may, after the date of the

entry or disclosure, be entered into with that Company or person, is a sufficient disclosure of interest in relation to that transaction.

17.2. No Right of interested director to vote

17.2.1. A director may not, unless the other directors resolve otherwise, vote or participate in respect of any transaction in which the director is interested, and if the director does so the director's vote will be not counted however such director will be counted in the quorum present at the meeting.

17.2.2. A director may not enter into a contract with the company as a vendor, purchaser or any other capacity and not to retain for his own any benefit any profit.

18. CONTROLLERS OF THE COMPANY

18.1. The powers exercised in the company shall be under the ultimate effective control of the Board, each Director and each Shareholder, and ultimately the beneficial owners who exercise ultimate effective control in the company or hold a senior managing position.