

CONSTITUTION OF  
COPYRIGHT SOCIETY OF BOTSWANA  
(COSBOTS)

(COMPANY LIMITED BY GUARANTEE AND  
NOT HAVING A SHARE CAPITAL)



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## DEFINITIONS AND INTERPRETATION

### 1. **Defined Terms**

- 1.1 In this Constitution, unless there is something in the subject or context inconsistent therewith:
- (a) "Affiliated society" means any of the collecting societies in other countries, having objects similar to those of the Company, with which the Company is for the time being affiliated;
  - (b) "Artistic Work" means a graphic work, photograph, sculpture or collage, irrespective of its artistic quality; a work or architecture, being a building or a model of a building, irrespective of its artistic quality, a work of artistic craftsmanship not falling within this definition, irrespective of its artistic quality;
  - (c) "Author" means, unless otherwise defined herein, an author as defined in the Copyright and Neighbouring Rights Act [CAP 68:02] as amended from time to time;
  - (d) "Board" means the Board of Directors for the time being of the Company, as constituted and authorised to act pursuant to this Constitution;
  - (e) "Candidate Member" means a member of the Company elected to candidate membership pursuant to the provisions of this Constitution and having the rights, privileges and obligations provided for candidate members by this Constitution;
  - (f) "Communicating to the public" means publishing of works protected in accordance with section 3 of the Copyright and Neighbouring Rights Act [CAP. 68:02];
  - (g) "Company" means the Copyright Society of Botswana established under section 36A of the Copyright and Neighbouring Rights (Amendment) Act, 2005 Act No. 6 of 2006;
  - (h) "Companies Act" means the Companies Act 2003, Act No 32 of 2004 of the Republic of Botswana (as amended from time to time);
  - (i) "Copyright Office" means the office established under section 22A of the Copyright and Neighbouring Rights (Amendment) Act, 2005 Act No. 6 of 2006;
  - (m) "Distribution" means any distribution which may, pursuant to the Rules, be made among the members and affiliated societies out of the monies received by the Society in respect of the exercise of the rights, licence or authority granted by them to the Society and "Distributed" and "Distributable" have corresponding meanings;
  - (n) "Film synchronisation right" means in respect of any work the right to re-produce the work in any part of the world on the sound track of any cinematograph film;
  - (o) "Founder Member" means the initial members involved in the setting up of the Company.
  - (p) "Full Member" means a member of the Company being a subscriber to the Constitution or elected to full membership in accordance with the Constitution, and having the rights, privileges and obligations provided for members by this Constitution;

- (q) "Literary Work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes a table of compilation and a computer programme;
- (r) "Mechanical/reproduction right" means in respect of any work the right to make in any part of the world a Work Protected;
- (s) "Member" means and includes a full member and a candidate member;
- (t) "Membership" means membership of the Company;
- (u) "Musical Work" shall mean a work consisting of music, inclusive of or any words or action intended to be sung, spoken or performed with the music;
- (v) "Performance" includes, unless otherwise stated, any mode of acoustic presentation, including any such presentation by means of broadcasting or the causing of a work to be communicated to the public, or causing the work to be transmitted to subscribers to a diffusion service or by the exhibition of a cinematograph film, or by the use of a recording, or by any other means and references to "perform" and "performing" shall be construed accordingly;
- (w) "Performing right" means and includes the right of performing in public, public broadcasting, communicating to the public and causing to be transmitted in a diffusion service, in all parts of the world, by any means and in any manner whatsoever, all works or parts thereof;
- (x) "Proprietor" means any person, juristic or otherwise, who owns or controls in the Republic of Botswana (and any other countries or territories) the certain copyrights in works or any interest in such copyrights;
- (y) "Recording" has the meaning assigned to it by the Copyright and Neighbouring Rights Act [CAP. 68:02];
- (z) "Republic" means the Republic of Botswana;
- (aa) "Rights holder" means the holder of any rights protected by the Copyright and Neighbouring Rights Act [CAP. 68:02] and shall be the owner of copyrights as defined in the said Act;
- (bb) "Rules" means such rules or bye-Laws as the Board may deem necessary or expedient or convenient for the proper conduct and management of the Company, and no rule or bye-Law shall be inconsistent with or shall affect or repeal anything contained in this Constitution.
- (cc) "Secretary" means any person appointed to perform the duties of the secretary of the Company, and who is permitted in accordance with the requirements of the Companies Act, 2003 Act No 32 of 2004 to act as such;
- (dd) "Sound Recording" means any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied, excluding a fixation of sounds and images, such as the sound track of an audiovisual work; and
- (ee) "Works Protected" means those works listed at section 3 of the Copyright and Neighbouring Rights Act [CAP. 68:02].

- 1.2 Words or expressions contained in this Constitution shall bear the same meaning as in the Companies Act *supra*, the Copyright and Neighbouring Rights Act [CAP. 68:02] or any statutory modification thereof.
- 1.3 Expressions referring to writing shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.
- 1.4 Words importing the singular number shall include the plural number, and vice versa.
- 1.5 Words importing the masculine gender shall include the feminine and neuter genders.
- 1.6 Words importing persons shall include corporations.

## 2. **OBJECTS OF THE COMPANY**

The principal objects for which the Company is established are:

- (a) To negotiate and grant licences in written agreement with the owners of copyright for:
  - (i) the adaptation of works, performances and sound recordings;
  - (ii) the insertion of works, performances or sound recordings in other scopes;
  - (iii) the use of works for publicity purposes.
- (b) To set rates for royalties in accordance with acceptable international standards;
- (c) To collect and distribute royalties to appropriate owners of copyright;
- (d) To represent the owners of copyright in the various categories of works protected under the Copyright and Neighbouring Rights Act *supra*;
- (e) To put in place rules and regulations, approved by the Copyright Office, which contain such provisions as are necessary to ensure the protection of the interests of its members;

The “other” ancillary objects of the Company are:

- (f) To receive by way of transfer, cession and assignment, and to use, hire, obtain, take over or otherwise acquire and to improve, protect, manage, develop, exploit, enfranchise, let, deliver, turn to account, deal in, transfer away or otherwise dispose of, and to exercise and enforce on behalf of any person including the Members of the Company or anyone else, any and all rights, obligations, powers, duties and remedies arising under the Copyright Act [Chapter 68:02], any act which is related in any way whatsoever to such Act and/or any amendment to any such Acts or any regulation thereto and/or under any enactment in substitution thereof and/or under any law arising under the common law generally or under any other legislation, regulation or enactment having the force of law, and furthermore to do all the above in any manner and for any purpose not only in respect of the above rights, obligations, powers, duties and remedies in the Republic of Botswana, but also in respect of all similar rights anywhere else in the world.

- (g) In connection with the aforesaid rights, obligations, powers, duties and remedies to make and from time to time to rescind, alter, vary and add to any arrangements or agreements, and to collect and receive and give effectual discharges for all royalties, fees and other monies payable under any such agreements or arrangements or otherwise. To recover royalties, fees and other monies and to restrain, interdict, claim and recover damages for any infringement of any rights of the Company or of others and to release, compromise, or refer to arbitration any disputes, actions or proceedings and to conduct any legal proceeding or action in any capacity whatsoever.
- (h) To obtain from its members and from others, cessions, assignments, assurances, powers of attorney and other authorities or instruments which may be deemed necessary or expedient to enable the Company to exercise and enforce in its own name or otherwise any rights, obligations, powers, duties and remedies, and to execute all such assurances, agreements and other instruments and do all such acts as may be deemed by the Directors to be necessary or expedient for the purpose of the exercise or enforcement by the Company of its rights, obligations, powers, duties and remedies.
- (i) To make or have made records of literary, dramatic, musical or artistic works or of any subject matter of copyright for private circulation, sale to the public or to others, or for any other purpose and to make any fixation or any mechanical or other reproductions for any purpose whatsoever, subject to the consent of the rights holders.
- (j) To publish or have published any literary, dramatic, musical or artistic works of members or others, for private circulation, sale to the public or others, or for any other purpose.
- (k) Subject to (j) above, to sell, hire out, and distribute free or otherwise dispose of such records and/or published works in any manner the Directors may think fit.
- (l)
  - (i) To carry on the business of agents brokers, appraisers, valuers, commission agents, surveyors, and general agents, and to purchase or otherwise acquire and to sell, let or otherwise dispose of any movable or immovable property whether corporeal or incorporeal.
  - (ii) To carry on the business or trade of patentees, and promoters and dealers in all kinds of property and rights.
  - (iii) To purchase, take on lease or otherwise acquire any concessions, licences, interests and rights of all kinds and to exploit same.
- (m) To make and from time to time alter or vary any rules for regulating:
  - (i) the mode in which the works of members and others are to be communicated or declared by them to the Company;
  - (ii) the mode in which, the periods or period for which, and the conditions under which, the members and others are to authorise the

- Company to exercise and enforce the rights, obligations, powers, duties and remedies aforesaid of the members and others in respect of such works as aforesaid;
- (iii) the mode and shares in which and the times at which the net monies received by the Company in respect of any such works as aforesaid are to be distributed;
  - (iv) the provision either directly or through trusts or associations, of gratuities, donations or pensions for members or ex-members of the Company, or their wives, widows, families or dependants; and
  - (v) the administration of the property or business of the Company and any matters incidental thereto.
- (n) To distribute the net monies received by the Company in the exercise of the foregoing powers, after making provision there from for the expenses and liabilities of the Company incurred in such exercise or in otherwise carrying out the purposes and operations of the Company and for any contributions or payments for any of the purposes of the Company.
- (o)
- (i) To grant gratuities, donations, pensions and emoluments to any member or ex-member of the Company or any person at any time in the employment of the Company, or engaged in any business acquired by the Company, and the wives, widows, families and dependants of any such persons.
  - (ii) To make payment by way of loan or gift or on such terms as may be thought fit by the Directors for any purpose conducive to the improvement or advancement of the composition, teaching or performance of music, or for the encouragement or advancement of the national arts, or for any other purposes calculated to benefit members or ex-members of the Company or persons employed by or having dealings with the Company, or to make such payments to or for the benefit of any society, associated company, fund, trust or institution whose objects shall include any such purpose.
  - (iii) To subscribe money for or otherwise assist charitable or benevolent objects.
  - (iv) To receive contributions, subscriptions or donations for any of the aforesaid purposes from members of the Company, employees or others.
- (p) To undertake the business of printers, authors, publishers, distributors, engravers, book and print sellers, bookbinders, advertisers, commercial artists, journalists, makers of directories, anthologies and similar books, and to carry on all kinds of business involving public addresses and public address systems and productions and to carry on the business involving or relating to broadcasting, radio productions and television productions;

lecturing, photography of all kinds including cinematographic businesses of all kinds and reproduction of art and all commercial matters including photography, films, radio, television, newspapers and/or any other sundry or like media.

- (q) To undertake the businesses of newspaper and magazine proprietors, newsagents, journalists, literature agents, and stationers in all their branches.
- (r) To undertake the businesses of manufacturers and distributors of and dealers in engravings, prints, pictures, drawings, and any written, engraved, painted or printed productions, in all their branches.
- (s) To undertake the businesses of advertising agents, advertisement contractors, and designers of advertisements, in all their branches.
- (t) To undertake the business of holders of exhibitions and dealers in pictures, and makers and sellers of picture frames, artists' colours, oils, paints, paint brushes, and other instruments, articles, and ingredients relating to any such business.
- (u) To undertake all or any of the businesses of inventors, manufacturers, dealers, agents, distributors, in all types and kinds of machinery.
- (v) To apply for, purchase, or by other means acquire and protect, prolong, and renew, whether in Africa or elsewhere any patents, patent rights, brevets d'invention, licences, protections, and concessions which may appear likely to be advantageous or useful to the Company, and to use and turn to account and to manufacture under or grant licences or privileges in respect of the same, and to expend money in experimenting upon and testing and in improving or seeking to improve any patents, inventions, or rights which the Company may acquire or propose to acquire.
- (w) To undertake the businesses of a loan and mortgage company, investors, financiers, company promoters, underwriters, manufacturers, importers, exporters, dealers in movable and immovable property.
- (x) To acquire and undertake the whole or any part of the business, goodwill, and assets of any person, firm or company carrying on or proposing to carry on any of the businesses which this Company is authorised to carry on, and as part of the consideration for such acquisition to undertake all or any of the liabilities of such person, firm or company, or to acquire an interest in, amalgamate with, or enter into partnership or into any arrangement for sharing proceeds, or for co-operation, or for limiting competition, or for mutual assistance with any person, firm or company, and to give or accept, by way of consideration for any of the acts or things aforesaid or property acquired, any shares, debentures, debenture stock, or securities that may be agreed upon, and to hold, retain, or sell, mortgage, and deal with any shares, debentures, debenture stock, or securities so received.



- (y) To act as managers, secretaries, administrators, trustees and executors, technical advisers, controllers of and consultants to any Company, and corporation established by statute, any firm or any government or quasi government and to undertake secretarial, managerial and administrative duties and operations, to accept and administer trusts and to act as trustees, and to supervise, control and manage or administer any undertaking, transaction or operation of any kind.
- (z) To undertake business as capitalists, financiers, shippers, miners, concessionaires, promoters, underwriters and sub-underwriters, and merchants, and to undertake and carry out and execute all kinds of financial, commercial, trading and other operations, to carry on the business of commercial, land, estate, property, financial, commission and general agents and brokers (other than in stocks and shares), auctioneers and appraisers, agents and representatives of insurance companies, building societies, financial and investment companies and to undertake the duties, functions and services applicable to or customarily undertaken or carried out by any person, company or undertaking carrying on any of the aforementioned businesses or pursuits.
- (aa) To undertake other business which may seem to the Board of Directors capable of being conveniently carried on in connection with the above objects, or calculated directly or indirectly to enhance the value of or render more profitable any of the Company's property.
- (bb) To acquire, take transfer of, to deal or traffic in movable and immovable property of every description and to sell, improve, manage, develop, turn to account, let, lease, exchange, part with, deliver, charge, mortgage or otherwise howsoever dispose of or deal with any undertaking or movable and immovable property, assets, and rights of any kind or any part thereof.
- (cc) To undertake business of all kinds and all things incidental thereto.
- (dd) To improve, manage, cultivate, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.
- (ee) To invest and deal with the moneys of the Company not immediately required in such shares or upon such securities and in such manner as may from time to time be determined by the Directors.
- (ff) To lend and advance money or give credit to such persons, firms or companies, and on such terms as may seem expedient to the Directors, and in particular to customers of and others having dealings with the Company, and to give guarantees or become security for any such persons, firms, or companies.
- (gg) To borrow or raise money in such manner as the Company shall think fit, and in particular by the issue of debentures or debenture stock (perpetual or otherwise), and to secure the repayment of any money borrowed, raised,

or owing, by mortgage, charge, or lien upon the whole or any part of the Company's property or assets (whether present or future) and also by mortgage, charge, or lien to secure and guarantee the performance by the Company of any obligation or liability it may undertake.

(hh) To improve, manage, develop, exchange, mortgage, charge, sell, dispose of, turn to account, grant rights and privileges in respect of, or otherwise deal with all or any part of the property, movable or immovable, and rights of the Company.

(ii) To purchase, take on lease or tenancy or in exchange, hire, or otherwise acquire and to develop, turn to account and deal with any immovable or movable property for any estate or interest whatsoever, and any rights, servitudes over or in respect of any property and any land, buildings, works, machinery, engines, rolling stock, plant, stock-in-trade, live and dead stock, gold and silver bullion, specie, coin, precious metals and any other property, articles and things which may be necessary, suitable or convenient for the purposes of the Company's business or may be used conveniently or be capable of being dealt with in connection with, or may enhance the value of or render profitable any of the Company's property, rights, or assets, or which may seem calculated directly or indirectly to facilitate the realisation of any shares, stocks, debentures, debenture stocks or other securities of the Company or investments owned by the Company or to prevent or diminish any apprehended loss or liability.

(jj) To open and operate banking accounts and to draw, make, accept, endorse, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures or other transferable or negotiable instruments.

(kk) To enter into any arrangements with any government or authority (supreme, municipal, local or otherwise) or any companies, firms, or persons that may seem to the Directors conducive to the attainment of the Company's objects or any of them, and to obtain from any such government, authority, company, firm, or person, any charters, contracts, decrees, rights, privileges, and concessions which the Company may think desirable, and to carry out, exercise, and comply with any such charters, contracts, decrees, rights, privileges, and concessions.

(ll) To subscribe for, take, purchase, or otherwise acquire and hold shares or other interests in or securities of any other company having objects altogether or in part similar to those of this Company or carrying on any business capable of being carried on so as directly or indirectly to benefit this Company.

(mm) To act as agents or brokers and as trustees for any person, firm, or company, and to undertake and perform sub-contracts, and also to act in any of the businesses of the Company through or by means of agents, brokers, sub-contractors, or others.

- (nn) To remunerate any person, firm or company rendering services to this Company either by cash payment or by the allotment to him or them of shares or securities of the Company credited as paid up in full or in part, or otherwise as may be thought expedient by the Directors.
- (oo) To pay all or any expenses incurred in connection with the promotion, formation, and incorporation of the Company, or to contract with any person, firm or company to pay the same, and to pay commissions to brokers and others for underwriting, placing, selling, or guaranteeing the subscription of any shares, debentures, debenture stock, or securities of this Company.
- (pp) To enter into any incentive schemes with employees, and to support and subscribe to any charitable or public object, and any institution, society, or club which may be for the benefit of the Company or its employees, or may be connected with any town or place where the Company carries on business; to give pensions, gratuities, or charitable aid to any persons who may have been directors of or may have served the Company, or to the wives, children, or other relatives of dependants of such persons; to make payments towards insurance; to form or contribute or subscribe to superannuation and pension funds or schemes for the benefit of any such persons, or for their wives, children or other relatives or dependants; and to form and contribute to provident and benefit funds for the benefit of any such persons, or of their wives, children or other relatives or dependants.
- (qq) To promote any other company for the purpose of acquiring the whole or any part of the business or property and undertaking any of the liabilities of this Company, or of undertaking any business or operations which may appear to the Directors likely to assist or benefit this Company or to enhance the value of any property or business of this Company, and to place or guarantee the placing of, underwrite, subscribe, or otherwise acquire all or any part of the shares or securities of any such company as aforesaid.
- (rr) Subject to any restrictions in the Companies Act that may apply to Directors, to sell or otherwise dispose of the whole or any part of the business or property of the Company, either together or in portions, for such consideration as the Directors may think fit.
- (ss) To adopt any such means of making known the business of the Company as may be expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals, and by granting prizes, rewards, and donations.
- (tt) To conclude contracts and give and enter into suretyship or guarantees for any purposes in accordance with objects of the Company and, if applicable, the Rules of the Company.
- (uu) To do all or any of the above things in any part of the world, and either as principals, agents, trustees or otherwise, and either alone or in conjunction

with others, and by or through agents, sub-contractors, trustees or otherwise.

- (vv) To do all such other things incidental or which the Company may think conducive to the attainment of the above objects or any of them.
- (ww) The objects set forth in any sub-clauses of this clause shall not, except when the context expressly so requires, be in any way limited or restricted by reference to or inference from the terms of any other sub-clause, or by the name of the Company. None of such sub-clauses or the objects therein specified or the power thereby conferred shall be deemed subsidiary or auxiliary merely to the objects mentioned in any other sub-clause of this clause, but the Company shall have full power to exercise all or any of the powers conferred by any part of this clause in any part of the world and notwithstanding that the business, undertaking, property or acts proposed to be transacted, acquired, dealt with or performed do not fall within the objects of any other sub-clause of this clause.

### 3. **MISCELLANEOUS**

3.1 The Registered Office of the Company shall be situated in Gaborone.

3.2 The members of the Board of Directors do not have personal interest. The income and property of the Company, when so ever derived shall be applied solely towards the promotion of the objects of the company as set forth in this Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise however by way of profit, to the Founder Member of the Company.

3.3 No part of the funds of the Company shall be remitted beyond the borders of Botswana, except in payment for supplies or for services the value of which accrues to persons ordinarily resident in Botswana, or for the purposes of investment as may be approved by the Board of Directors.

3.4 No part of the funds or assets of the Company shall be made over, either voluntarily or compulsorily, to any institution which has not been approved under the Societies Act, Companies Act or some other law in force in the Republic of Botswana.

PROVIDED THAT, nothing herein contained shall prevent the payment in good faith by the Company:

- (i) Of reasonable and proper remuneration to any officer or servant of the Company or to any member thereof, in return for any services actually rendered to the Company;
- (ii) Of reasonable and proper rent for the premises let by any Member of the Company or its Board of Directors;
- (iii) To any member of the Company or members of the Board of Directors for out-of pocket expenses incurred in connection with Company's activities.

3.5 The liability of the members is limited.

3.6 Every Member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member, or within one (1) year after he ceases to be a member, for the payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories amongst themselves such amount as may be required and not exceeding P1.00.

3.7 The Founder Member of the Company undertakes to provide additional assets, of value not exceeding P1.00, to the company in the event of it being wound up for the payment of debts and liabilities contracted in accordance with the Constitution of the Company and of the costs, charges and expenses of the winding up.

4.

## **MEMBERSHIP**

4.1 Such persons as the Founder Member shall admit to membership shall be the Members of the Company.

4.2 The number of Members with which the Company proposes to be registered is six (6) but the directors may from time to time register an increase of Members.

4.3 The Founder Member proposes to register the Company with 8 (eight) Directors, one of whom shall be a representative of a Government department, and who shall have no voting powers as a Director.

(a)

(i) Any rights holder of any of the rights managed by the Society and any person (hereinafter in this Constitution referred to as a "Successor") being the widow, child or other relative, next of kin, beneficiary under his will, or personal representative of a deceased member, shall be eligible for membership, and may, on application by him, be elected either as a full member or as a candidate member by the Board at its discretion.

(ii) Unless there are good reasons to the contrary, parties engaged full time in their occupations for each of the Works Protected shall be eligible for membership on application. Furthermore, unless there are good reasons to the contrary, a musical performer shall be granted membership on application if he or she can prove that his or her performances have been recorded and made publicly available as under recording and/or his or her performances have been broadcasted in Botswana in the two years preceding his or her application.

(iii) Every application for membership shall be made to the Board in writing in such form as the Board may prescribe; and on such application being accepted by the Board, it shall issue to the applicant a certificate in writing of the membership of such applicant, in such form as the Board may prescribe, signed by a Director and countersigned by the Secretary or other duly authorised officer. In the case of a firm the membership shall be in the name of the firm.

(b) the following regulations shall apply to candidate members:

(i) A candidate member may have such rights and privileges, and be subject to such obligations, as shall be determined by the Board from time to time, and shall be eligible (without further application) for election to full membership by the Board at its discretion; and

(ii) the membership of a candidate member shall automatically lapse if, at the end of the five years after the date of his election, the Board has not passed a resolution either electing him to full membership or extending the duration of his candidate membership.

5. (a) Every member shall, on election and/or at any time thereafter, on request by the Company, assign or cause to be assigned to the Company:
  - (i) the performing right in all or any works or parts of works, present and future, of which he is the composer, author, publisher, producer and/or proprietor: and/or
  - (ii) the whole or any part of the performing right in any work or part of a work to the extent that any such right or part of a right is or shall during his membership be or become vested in him.
- (b) Every member shall, on election and/or at any time thereafter, on request by the Company, assign or cause to be assigned to the Society the film synchronisation right in every work composed or written primarily for the purpose of being included in a particular cinematograph film or films in contemplation when such work was commissioned of which the assignor member shall at any time thereafter be the composer, author, publisher and/or proprietor.
- (c) Subject to paragraph (b) of this clause, every member may, on election and/or at any time thereafter, assign or cause to be assigned to the Company:
  - (i) the mechanical/reproduction right in all or any works, present and future, of which he is the composer, author, publisher, producer, performer and/or proprietor; and/or
  - (ii) the whole or any part of the mechanical/reproduction right in any work or part of a work to the extent that any such right or part of a right is or shall during his membership be or become vested in him.
- (d) Any assignment executed pursuant to paragraph (a), paragraph (b) or paragraph (c) of this clause shall be in the form prescribed by the Company and shall operate for and during the period of the assignor's membership, subject to the provisions of this Constitution.
- (e) Pending such assignment, and in so far as it may not extend, every Member by virtue of his election grants to the Company, for and during the period of his membership, subject to the provisions of this Constitution, in his name or in that of the Company, but at the Company's sole charge and expense, the sole power and authority:
  - (i) to authorise or permit or forbid the exercise of the performing right and mechanical/reproduction right in respect of all or any work or works or part of a work of works of which he is (or shall during his membership be or become) the composer, author, publisher and/or proprietor;
  - (ii) to grant licences on his behalf for the exercise of the performing and/or mechanical/reproduction right in respect of all or any of such works;
  - (iii) to collect fees, subscriptions and all monies whether for the performance or mechanical reproduction of any such works, or by way of damages or compensation for unauthorised performances or reproductions of such works;
  - (iv) to institute proceedings against all persons infringing the said performing and/or mechanical/reproduction right and, if the Board at its discretion thinks fit, to defend or oppose any proceedings taken against any member

in respect of such works, and to compound, compromise, refer to arbitration or submit to judgment in any such proceedings, and generally to represent the member in all matters concerning the said performing and/or mechanical/reproduction right;

- (v) to protect generally the performing and mechanical/reproduction right in the said works; and
  - (vi) to delegate authority to do any acts as aforesaid to any affiliated society and to any agent or representative in territories overseas or elsewhere outside the Republic, for the purpose of exercising the said rights in such territories.
- (f) The Company may exercise and enforce the performing and/or mechanical/reproduction right of members of any affiliated societies, pursuant to the terms of any contracts now existing or which may hereafter be made between the Society and such affiliated societies.
- (g) The Company may accept and act upon the authority of any member or affiliated society to exercise the performing and/or mechanical/reproduction right in their works to a greater extent than that defined in these clauses.
- (h) The Company may, by notice in writing to any member, decline to exercise the whole or any part of the performing and/or mechanical/reproduction right in any particular work or works of which such member is the composer, author, performer, publisher, producer or proprietor, and thereupon the provisions of sub-clauses (a) and (c) of this clause shall cease to apply to such right, and any assignment thereof already made to the Company by such member shall be determined by the Company. Provided always that the Company may at any time, and from time to time, by further notice in writing to such member, withdraw such notice in respect of all or any of the rights comprised therein, whereupon the provisions of sub-clauses (a) and (c) of this clause shall again apply to such right or rights.
6. (a) No member shall be at liberty to transfer his membership to any other person, or to alienate or exercise the performing right vested in the Company by the member, or controlled by the Company by virtue of his membership, or by this Constitution required to be so vested or controlled.
- (b) No member shall enter into any contract under which he shall or may be required, whether for valuable consideration or not, to write or compose any work for any non-member whether as employer or otherwise, without inserting in such contract an express provision reserving to such member the performing and/or mechanical/reproduction right in any such work.
7. (a) On the death of a member his membership shall cease and shall not be transmitted to any other person, but the rights (if any) already vested in the Company by the member, or controlled by the Company by virtue of his membership, shall, subject to the provisions of this Constitution, remain so vested or controlled for a period ending on the 31st day of December in the seventh year following the year in which the member's death took place, or, if a successor shall be elected during such period, so long as such successor remains a member. Any payment to which the member would, if living, have been entitled in accordance with the Rules in respect of any period prior to the election of such successor shall be made to the member's personal representative until a successor is elected, or until the end of such seventh year as aforesaid, whichever



is the earlier date. Upon the election to membership of any successor as aforesaid, any payment to which the member would, if living, have been entitled in accordance with the Rules in respect of any period subsequent to such election shall be made to such successor.

- (b) In the case of a member, being a limited company or a firm, its membership shall cease, in the case of a limited company, in the event of and upon the liquidation of such limited company (other than voluntary liquidation for the purpose of reconstruction), and, in the case of a firm, in the event of an upon such firm ceasing to carry on business. Upon such liquidation or cessation of business, the rights (if any) already vested in the Company by such limited company or firm, or controlled by the Company by virtue of the membership of such limited company or firm shall, subject to the provisions of this Constitution, remain so vested or controlled for a period ending on the 31st day of December in the seventh year following the year in which the liquidation or cessation of business occurred. Any payment to which the limited company or firm would, if it had remained a member, have been entitled in accordance with the Rules in respect of such period shall be made to the person entitled for the time being to receive debts due to the limited company or firm.
8. The membership of any member shall ipso facto cease:
- (i) upon the expiration of the period for which copyright subsists in all the works in respect of which such member is entitled to participate in distribution; or
  - (ii) in the case of any member, being an executor or administrator, upon his having disposed of all interest in all protected rights which may have vested in him as such executor or administrator.
9. (a) Any member may, not less than three (3) calendar months before the 30th day of April of every year, give notice in writing to the Society to determine his membership on such 30th day of April, and if such notice is duly received by the Society his membership shall cease accordingly.
- (b) The Board may at its absolute discretion resolve that the notice referred to in this Constitution shall only take effect from the end of the financial year immediately following the giving of such notice provided that the Board shall as soon as practicable supply the member with written reasons for so resolving.
10. The Board may at any time give to any member notice in writing, signed by the Secretary or other officer, determining his membership at the expiration of fourteen (14) days from the date of such notice, and his membership shall cease accordingly. Provided always that if, before the expiration of such notice from the Board to any full member, such member shall in writing require the Board to submit the question of the continuance of his membership to the decision of the Society in Extraordinary General Meeting, he shall not cease to be a member unless and until the Society in Extraordinary General Meeting shall have approved the action of the Board. If the Society in Extraordinary General Meeting shall approve the action of the Board, the member shall cease to be a member at the conclusion of such meeting.
11. If any proceedings have been instituted by or against the Company in respect of a member's works, either in the name of the Company or of the member, and such member ceases to be a member during the pendency of the proceedings, any rights the subject of such proceedings which have been vested in the Company by such member, or are controlled by the Company by virtue of his membership, shall remain so vested or controlled until such proceedings are finally disposed of.

12. Subject to the provisions of this Constitution, all rights, privileges and obligations of membership shall cease on the date of cessation of membership. In particular, but without prejudice to the generality of the foregoing, the member concerned shall cease to have any claim upon the assets of the Society, and shall not be entitled to participate in any further distribution, save as to any payment to which he may be entitled in accordance with the Rules in respect of any period prior to cessation of membership.

#### **GENERAL MEETINGS**

13. The Company shall in each year hold a General Meeting as its Annual General Meeting, in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it; and not more than fifteen (15) months shall elapse between the date of one Annual General Meeting of the Company and that of the next. The Annual General Meeting shall be held at such time and place as the Board shall appoint.
14. All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.
15. The Board may, whenever it thinks fit, convene an Extraordinary General Meeting.
16. Extraordinary General Meetings shall also be convened on the requisition of members of the Company.

#### **NOTICE OF GENERAL MEETINGS**

16. An Annual general meeting and a meeting called for the passing of a special resolution shall be called by twenty one (21) days notice in writing at the least, and a meeting of the Company, other than an annual general meeting or a meeting for the passing of a special resolution, shall be called by fourteen (14) days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and also of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under the Constitution of the Company, entitled to receive such notices from the Company:
17. The accidental omission to give notice of a meeting to, or the non-receipt of the notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.

#### **PROCEEDINGS AT GENERAL MEETINGS**

18. All business that is transacted at an extra-ordinary general meeting, and all business that is transacted at an annual general meeting, with the exception of consideration of accounts, balance sheets, and the reports of the directors and auditors, the election of directors in the place of those retiring and the appointment of, and the fixing of the remuneration, if any, of the auditors, shall be deemed as special.
19. No business shall be transacted at any general meeting unless a quorum of five (5) Directors are present at the time when the meeting proceeds to business.
20. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of representatives of the Founder Member, shall be dissolved and in any other case, it shall stand adjourned to the same day in the next week at the same time and place, or to such other time and place as the directors may

determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the representatives of the Founder Member present shall be a quorum.

21. If at any meeting the Chairperson appointed by the Founder Member is not present within fifteen minutes after the time appointed for the holding of the meeting, the representative of the Founder Member present shall become Chairperson of the meeting.
22. The Chairperson may, at any meeting at which a quorum is present, with the consent of such representatives of Founder Member present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
23. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded;
  1. by the Chairperson; or
  2. by at least half the representatives of the Founder Member present in person or by proxy.

Unless a poll be so demanded, a declaration by the Chairperson that a resolution has, on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. The demand for a poll may be withdrawn.

24. If a poll is duly demanded it shall be taken in such manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
25. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
26. A poll demanded on the election of a Chairperson, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs, and any business other than upon which a poll has been demanded may be preceded with pending the taking of the poll.
27. If, after consultation with the Minister of Trade and Industry and the Board, the representative of the Founder Member is of the opinion that the policies being pursued by the Board are not adequate for, or conducive to the achievement of the objectives of Company, the representatives may, by special resolution at an annual or extra-ordinary general meeting, issue directives concerning the policies to be followed, and the Board shall give effect to such resolution.

## VOTING RIGHTS

28. (a) Every member shall, on a show of hands, have one (1) vote, provided that no member shall be entitled to vote on a show of hands unless he is present in person, or by proxy.
- (b) Every member shall, on a poll, have a number of votes equal to the figure of Botswana Pula credited to such member as royalties from the use of Botswana works in the Society's operational territory as reflected in the Society's distribution immediately preceding the General Meeting at which the voting takes place, provided that the number of votes exercisable by any one member shall not exceed 2% (two percent) of the total voting rights of all members having the right to vote at a General Meeting.
29. On a poll votes may be given either personally or by proxy.
30. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing; or, if the appointer is a limited company, either under the common seal, or the hand of an officer thereof duly authorised; or, if the appointer is a firm, under the hand of a partner in the firm, or their attorney duly authorised.
31. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the Society, or at such other place within the Republic as is specified for that purpose in the notice convening the meeting, not less than forty-eight (48) hours before the time for holding the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than forty-eight (48) hours before the time appointed for taking the poll; and, in default, the instrument of proxy shall not be treated as valid.
32. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

### **COPYRIGHT SOCIETY OF BOTSWANA (COSBOTS)**

I/We..... of..... being a representative of a Member of the above named Company, hereby appoint..... of ..... or failing him/her..... of..... as my/our proxy to vote for me/us on my/our behalf at the General Meeting of the Company, to be held on the..... day of..... 20....., and at any adjournment thereof. Signed this day ..... of 20.....

33. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the Society at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
34. Any limited company which is a member of the Society may, by resolution of its directors or other governing body, authorise any person being either a director, officer or manager

in the permanent and exclusive employment of such company to act as its representative at any General Meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the company which he represents as that company could exercise if it were an individual member of the Society.

### **BOARD OF DIRECTORS**

35. The Board of Directors shall consist of not less than 6 (six) nor more than 12 (twelve) Directors (including the Chairman, Vice-Chairman and Treasurer of the Company). Not less than one-half (1/2) of the number in office shall be representative of creators and performers, and not less than one-third (1/3) publishers and producers.
36. The first Directors shall be:
- (a) two Composers/Authors of music;
  - (b) two Publishers of Music;
  - (c) two Producers of Sound recordings;
  - (d) two Music Performers;
  - (e) one Author from the Literary Section;
  - (f) one Author from the Audiovisual/Fine Arts section;
  - (g) one member from a Government department – who shall have no voting powers as a director;
37. No person who is not a full member shall be appointed to act as a Director; provided that in the case of a limited liability company or firm being a full member, there may be appointed as a Director any person being either a director, partner, officer or manager in the permanent and exclusive employment of such limited company or firm, notwithstanding that such person is not himself a member and is not eligible for election.

Notwithstanding the foregoing there may be appointed as Director any person who, not being a member, has special knowledge and/or experience of copyright law and/or the administration of copyright, provided that any such Director shall not be taken into account for the purpose of the proportional representation specified in this Constitution.

38. The Chairman and Vice-Chairman of the Company, of whom one at least shall be a composer, author or performer, shall be elected by the Board of Directors from among themselves, and shall be respectively the Chairman and Vice-Chairman of the Board. They shall hold their respective offices concurrently for a period of three (3) years and be eligible for re-appointment so long as they respectively remain qualified to act as Directors.
39. The Chairman and Vice-Chairman of the Company, while they continue to hold those offices respectively, shall be subject to the same provisions as to resignation and removal as the other Directors.

### **REMUNERATION OF DIRECTORS**

40. Each Director shall be entitled for each meeting of the Board he shall effectively attend, such remuneration as may from time to time be determined by the Society in General Meeting for each meeting of the Board that he effectively attends, and the Board may

remunerate in such manner as it thinks fit any Director who shall be called upon to render any special services to the Society, or who shall have rendered any special services to it. The Directors, shall also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board or any Committee of the Board, for General Meetings of the Society, or in connection with the Society's business.

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

41. The Board shall have full and unrestricted power to reasonably refuse any application for membership and shall give reasons for such refusal.
42. The Board may specify membership criteria from time to time for the music section, literary section or audiovisual/fine arts section.
43. The business and operations of the Company shall be conducted and managed by the Board, who may exercise all such powers of the Company as are not, by the Companies Act, or by this Constitution, required to be exercised by the Company in General Meeting, subject nevertheless, to the provisions of the said Act or of this Constitution, and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Company in General Meeting, but no regulation made by the Company in General Meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made. Notwithstanding anything contained herein, the Board shall meet at least once a year, including a meeting held immediately after its election at the Annual General Meeting of the Company.
44. The Board may, from time to time and at any time, by power of attorney appoint any company, firm, person, or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes, and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution), and for such period, and subject to such conditions, as it may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.
44. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine.
45. All monies received by the Company in respect of the exercise of the rights, licence or authority granted by the members and the affiliated societies shall, subject to the provisions of this Constitution, be distributed or otherwise dealt with by the Board in accordance with the Rules.
46. The Board may, before making and distribution among the Members/Affiliates:
  - (a) Apply out of the receipts such sums as it thinks proper or has agreed to contribute as:
    - (i) Gratuities, donations, pensions and emoluments to any member or ex-member of the Society or any person at any time in the employment of the Society, or engaged in any business acquired by the Society, and the wives, widows, families and dependants of any such persons;

- (ii) Contributions to any benevolent, pension or similar fund which may be established for the benefit of members, ex-members or employees of the Company or their wives, widows, families or dependants.
  - (b) Set aside out of the receipts such sums as it thinks proper as subscriptions, donations, loans, gifts or other payments for any of the purposes for which power is given by this Constitution, provided that without the assent of the Company in General Meeting the aggregate of all such payments for the purposes for which power is given by this Constitution shall not exceed a sum equivalent to 1.5% (one coma five percent) of the Company's Income in any one year.
- 46. The Board may set aside out of the receipts such sums as it thinks proper as a reserve fund to meet contingencies, or for future distribution, or for repairing, improving and maintaining any of the property or premises of the Company, and for such other purposes as the Board shall in its absolute discretion think necessary or conducive to the interests of the Company, and may invest the several sums so set aside in such investments as it may think fit, and from time to time deal with or vary such investments and dispose of all or any part thereof for the benefit of the Company, and may divide the reserve fund into such special funds as it thinks fit, and employ the reserve fund or any part thereof for the general purposes of the Company, and that without being bound to keep the same separate from the other assets.
- 47. The Board may from time to time appoint any person (whether being a Member/Affiliate or not) as Chief Executive and/or other officer of the Company for such term and at such remuneration as it may think fit, and (subject to any contract entered into between the Board and such Chief Executive and/or other officer) may from time to time remove him and appoint some other person as General Manager and/or other officer in his place.
- 48. The Board may delegate to the Chief Executive and/or other officer all such of its administrative powers as aforesaid as it may deem necessary for the full and proper administration of the affairs of the Company.
- 49. The Board may regulate the general expenses of the Company and fix the salaries and emoluments of all employees, in consultation with the Chief Executive.
- 49. The Board shall pay and defray the expenses and liabilities of the Company, incurred in the exercise or enforcement of the rights vested in or controlled by the Company, out of the monies received by the Company in respect of the exercise or enforcement of such rights.
- 50. The Board may from time to time borrow, raise or secure the payment of such sum or sums of money as it may deem requisite for any purpose which it may deem expedient in the interests of the Company, but not so as to charge any right or interest of any member in respect of his works.
- 51. The Board may make and from time to time alter the Rules specified in of the Constitution, and, without prejudice to the generality of the foregoing, may also make, and from time to time alter, separate or additional rules for regulating the provision, through trusts or associations, of gratuities, donations or pensions for members, ex-members or employees of the Company, or their wives, widows, families or dependants. Provided that any Rules (other than such separate or additional rules) or any alterations of such Rules (other than as aforesaid), shall not take effect or come into operation unless or until the same have been approved by the Company in General Meeting.
- 52. The Board shall cause minutes to be duly made in books for the purpose:
  - (i) of all appointments of officers made by the Board;

- (ii) of the names of the Directors present at each meeting of the Board and of any Committee; and
- (iii) of all resolutions and proceedings of all meetings of the Company and of the Board and of any Committee;

and any such minutes of any meeting of the Company, of the Board or of any Committee, if purporting to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minutes. Every Director present at any meeting of the Board or of any Committee shall sign his name in a book to be kept for that purpose.

53. The Board shall as soon as reasonably practicable after the end of each financial year, submit, to the Copyright Office:

- (i) a report of its operations and performance during the year in question;
- (ii) a copy of its audited financial statements in respect of that year;
- (iii) a copy of such other reports as may be requested by the Copyright Office.

54. The Company shall distribute royalties on an equitable basis, approved by the Copyright Office, to its Members/Affiliates.

#### **DISQUALIFICATION OF DIRECTORS**

(a) The office of Director shall be vacated if the Director:

- (i) is absent from four (4) consecutive meetings without valid reasons;
- (ii) without the consent of the Company in general meeting holds any other office of profit under the company;
- (iii) becomes insolvent or makes any arrangement, assignment or composition with his/her creditors generally;
- (iv) becomes prohibited from being a Director by the Act;
- (v) becomes of unsound mind;
- (vi) resigns his/her office by notice in writing to the Company;
- (vii) is directly or indirectly interested in any contract with the Company and fails to declare the nature of his/her interest; or

(b) A Director shall not vote in respect of any contract in which he/she is interested or any matter arising therefrom, and if he/she does so his/her vote shall not be counted.

#### **ROTATION OF DIRECTORS**

55. (a) Subject to review of the Board, after every third year two (2) Directors for the time being shall retire from office, being the Directors who shall have been longest in office since their last appointment or re-appointment. If three or more Directors have an equal term of office, the Directors who shall retire shall be decided by lot.



- (b) Any Director who retires by rotation shall, if he chooses, be eligible for re-election and re-appointment subject to the provisions of this Constitution.
- (c) The Company's Annual General Meeting at which any Director retires as aforesaid may fill a vacancy by appointing any other person qualified pursuant to the provisions of this Constitution in the place of the Director so retiring.

### **ALTERNATE DIRECTORS**

- 56. Each Director shall have the power to nominate any person to act as alternate Director in his place during his absence or inability to act as such Director, and provided that the appointment of an alternate Director shall be approved of by the Board, and on such appointment being made, the alternate Director shall in all respects be subject to the terms and conditions existing with reference to the other Directors of the Company.
- 57. The alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall be cancelled, and the alternate Director shall cease to hold office whenever the Director who appointed him shall cease to be a Director, or shall give notice to the Secretary of the Company that the alternate Director representing him shall have ceased to do so, and in case of the disqualification or resignation of any alternate Director during the absence or inability to act of the Director whom he represents, the vacancy so arising may be filled by the Chairman of the Board nominating another person to fill the same, subject to approval of the Board.
- 58. The Company may by Ordinary Resolution, of which a special notice has been given, remove any Director before the expiration of his period of office notwithstanding anything in this Constitution or in any Agreement between the Company and such person.
- 59. In the event of the office of Chairman or Vice-Chairman of the Board becoming vacant, the Board shall appoint another Director to fill the vacancy, but the Director so appointed shall be subject to retirement from such office at the same time as his immediate predecessor in office would have been.
- 60. The Board may fill any vacancy on the Board by appointing a person suitably qualified pursuant to clause 37 of this Constitution.

### **PROCEEDINGS OF THE BOARD**

- 61. The Board may meet for the despatch of business, adjourn, or otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairman shall have a second or casting vote. A Director or the General Manager may, and the Secretary on the requisition of a Director or the General Manager shall, at any time summon a meeting of the Board.
- 62. The quorum necessary for the transaction of the business of the Board, or of any Committee of the Board, may be fixed by the Board, and, unless so fixed, shall be three (3).
- 63. The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the minimum number fixed by or pursuant to this Constitution as the necessary quorum of the Board, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a General Meeting of the Board but for no other purpose.

64. The Chairman of the Board, failing whom the Vice-Chairman, shall preside over all meetings of the Board. If at any meeting of the Board, the Chairman or the Vice-Chairman is not present within five (5) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting.
65. The Board may delegate any of its powers to committees consisting of such number or numbers of its body as it thinks fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.
66. A committee may elect a Chairman of its meetings. If no such Chairman is elected, or if at any meeting the Chairman is not present within five (5) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting.
67. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Directors present, and in case of an equality of votes the Chairman of the meeting shall have a second or casting vote.
68. All acts done by any meeting of the Board, or of a committee of the Board, or by any person acting as a Director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
69. A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the Board, or any committee of the Board, shall be as valid and effectual as if it had been passed at such a meeting duly convened and held.

#### **THE SECRETARY**

70. The Secretary shall be appointed by the Board for such term, at such remuneration, and upon such conditions, as it may think fit; and any Secretary so appointed may be removed by the Board.
71. A provision of the Act or this Constitution requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as, or in the place of, the Secretary.

#### **THE SEAL**

72. The Directors shall provide for the safe custody of the seal, which shall only be used under the authority of the Board or of a committee of the Board authorised by the Board in that behalf, and every instrument to which the seal shall be affixed, shall be signed by a director and shall be countersigned by the Chief Executive or by a second director or by some other person appointed by the Board for that purpose.

#### **ACCOUNTS**

73. The Board shall cause proper books of account to be kept with respect to:
- (i) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure take place; and
  - (ii) the assets and liabilities of the Company.

74. The books of account shall be kept at the registered office of the Company, or at such other place or places in the Republic as the Board thinks fit, and shall be open to inspection by the Directors.
75. The Board shall from time to time determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Company or any of them shall be open to inspection by members not being Directors, and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company, except as conferred by statute, or authorised by the Board, or by the Company in General Meeting.
76. The Board shall from time to time, in accordance with the Companies Act, cause to be prepared, and to be laid before the Company in General Meeting, such accounts, balance sheets and reports as are referred to in that Act.
77. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in General Meeting, together with a copy of the Auditor's report, shall, not less than twenty-one (21) days before the date of the meeting, be sent to all such members as are entitled to receive notices of General Meetings of the Company. Provided that this clause shall not require a copy of these documents to be sent to any person of whose address the Company is not aware.

#### **AUDIT**

78. Auditors shall be appointed and their duties regulated in accordance with the Companies Act.

#### **NOTICES**

79. A notice may be given by the Company to any member either personally or by sending it by post to his registered address, or (if he has no registered address within the Republic) to the address (if any) within the Republic supplied by him to the Company for the giving of notices to him.
80. Where a notice to a member is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of twenty-four (24) hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
81. Notice of every General Meeting shall be given in some manner hereinbefore authorised to:
  - (i) every member, except those who (having no registered address within the Republic) have not supplied to the Company an address within the Republic for the giving of notices to them; and
  - (ii) the Auditors for the time being of the Company.

No other persons shall be entitled to receive notices of General Meetings.

#### **INDEMNITY**

82. No director, employee, general manager, auditor, trustee (if any), secretary or other officer of the Company shall be liable for the acts, receipts, neglects or defaults of any other director, employee, general manager, auditor, trustee (if any), secretary or other officer, or

for joining in any receipt or other act for conformity, or for loss or expense happening to the Company through the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortuous acts of any person with whom any moneys, securities or effects shall be deposited, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office, or in relation thereto, he and his heirs, executors and

administrators shall be indemnified and held harmless out of the funds of the Company from and against all actions, costs, charges, losses, damages and expenses which he shall or may incur or sustain by or by reason of any act done, concurred in or admitted in or about the execution of his duty or supposed duty, in his respective office, unless any of the afore-going happens through his own negligence, recklessness, wilful misconduct, default, breach of duty or breach of trust.

#### WINDING UP

83. If upon winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members, but shall be given to the Copyright Office for distribution to rights-holders.

#### AMENDMENT OF THE CONSTITUTION

84. This Constitution may be amended in accordance with the Companies Act and the regulations, but no amendment shall become effective until it is approved and registered by the Registrar of Companies.

#### **SIGNATURE OF FOUNDER MEMBER PRESENTING THE COMPANY DOCUMENTS:**



Dated this 22 day of May 2008

Witness to the above signature 

Full residential or business address

Occupation Media Producer