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An Act to provide for the registration of Botswana Savings Bank under the Companies Act; for its continued existence as if it had been incorporated under the Companies Act, and for matters incidental thereto.

Date of Assent: 10/08/2012

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – Preliminary

1. This Act may be cited as the Botswana Savings Bank (Transition) Act, 2012 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —
“Board” means the Board of the Botswana Savings Bank established under the Botswana Savings Bank Act;
“Botswana Savings Bank” means the Botswana Savings Bank established under the Botswana Savings Bank Act;

Interpretation

Cap. 56:03

“Company” means Botswana Savings Bank Limited, as continued under section 3;
“conversion date” means the date on which Botswana Savings Bank is registered as a company;
“Employee Scheme” means an employee benefit plan established under section 5;
“Pension Fund” means the Botswana Savings Bank Staff Pension Fund which is a defined contribution fund; and
“Registrar” means the Registrar of Companies appointed under the Companies Act.

Cap. 42:01

PART II – *Registration, conversion and financial interest*

Registration and continuation of Botswana Savings Bank

3. (1) Botswana Savings Bank may apply to the Registrar to be registered as a public company under the Companies Act, and shall, upon registration, continue to exist as if it had been incorporated under that Act.

(2) For the purposes of subsection (1), the Minister shall designate the amount of share capital with which the Company shall be registered and shall divide the capital into shares of a fixed amount.

(3) Notwithstanding anything to the contrary contained in the Companies Act, the Minister shall sign the Memorandum and Articles of Association or certify the documents detailing the constitution, as the case may be, of the Company.

(4) Notwithstanding anything to the contrary contained in the Companies Act, the Company may use ‘Botswana Savings Bank Limited’ as its company name and be legally designated as such for all purposes.

Conversion of financial interest of Government

4. (1) As of the conversion date, the financial interest of the Government in Botswana Savings Bank shall be converted into issued shares in the capital of the Company or loans against the Company.

(2) As of the conversion date, the Minister may —

- (a) acquire, hold, dispose of and otherwise deal with the financial interest of the Government in the Company;
- (b) enter into any agreement or arrangement necessary or incidental to any activity referred to in paragraph (a); and
- (c) exercise all the rights of the Government as shareholder in the Company, and may in writing delegate, to any other person, the exercise of such rights.

Employee Scheme

5. The Company shall, as soon as is practicable after the conversion date, establish an Employee Scheme on such terms as shall be determined by the Board and approved by the Minister.

6. (1) Notwithstanding the provisions of the Income Tax Act and the Transfer Duty Act, no transfer duty or any other tax shall be payable in respect of —

Tax exemption
Cap. 52:01
Cap. 53:01

(a) the creation of the Company's initial share capital in terms of section 3 (2); or

(b) anything done in order to give effect to the conversion of Botswana Savings Bank from a statutory corporation to a public company, or the registration of the Company's constitution.

(2) Subject to subsection (1), the Company shall not be exempt from any tax, duty, rate or levy imposed by the provisions of the Income Tax Act, Value Added Tax or Customs and Excise Duty Act.

Cap. 52:01
Cap. 50:03
Cap. 50:01

7. (1) The Company shall, as soon as is practicable after the conversion date, apply under the Banking Act for a licence authorising it to transact banking business.

Licences
Cap. 46:04

Provided that for the purposes of transacting in any banking business for a period of 6 months after the conversion date, the Company shall be deemed to be licensed under the Banking Act.

(2) The Company shall not be exempt from applying to any other relevant authority for a licence to engage in any activity specified in its constitution.

PART III – *Miscellaneous Provisions*

8. (1) As of the conversion date, all assets and liabilities of Botswana Savings Bank shall become assets and liabilities of the Company without further assurance and the Company shall have all the powers necessary to take possession of, recover and deal with, such assets and discharge such liabilities.

Savings and
transitional

(2) Notwithstanding the provisions of subsection (1) or the provisions of the Companies Act to the contrary, the Minister may, by Order published in the *Gazette*, exclude certain assets or liabilities of Botswana Savings Bank from vesting in the Company as assets or liabilities of the Company.

(3) Any act lawfully performed by Botswana Savings Bank before the conversion date shall continue to be valid and shall continue to be performed by the Company.

(4) Any legal proceedings pending immediately before the conversion date, to which Botswana Savings Bank was a party shall continue to be performed by the Company as if the Company had been party thereto instead of Botswana Savings Bank.

(5) The Board of Directors of Botswana Savings Bank shall, until otherwise determined by the Minister, and subject to the Memorandum and Articles of Association, or the documents detailing the constitution, as the case may be, of the Company, serve as Directors of the Company.

(6) All employees of Botswana Savings Bank shall become corresponding employees of the Company and shall continue in office for the period for which, and subject to the conditions under which, they were appointed as employees of Botswana Savings Bank.

(7) Any enquiry or proceeding, whether of a disciplinary nature or otherwise, instituted or pending in respect of any employee of Botswana Savings Bank before the conversion date shall be dealt with, inquired into and determined in accordance with the procedures in place before the conversion date concerning such enquiry or proceedings.

(8) The Pension Fund shall remain in existence after the conversion date and every employee who was a member of the Pension Fund immediately before the conversion date, shall remain a member of the fund in accordance with its trust deed and rules and shall retain all benefits that are due to them in terms of the rules of the fund.

Reference to
terms in certain
Acts

9. As of the conversion date, any reference to “wholly-owned Government corporations”, “statutory corporation” or any such similar reference in the following Acts shall not be deemed to be a reference to the Company —

Cap. 55:01

(a) the Bank of Botswana Act;

Cap. 54:01

(b) the Finance and Audit Act; and

Cap. 27:03

(c) the Pension and Provident Funds Act.

Repeal of

Cap. 56:03

10. The Botswana Savings Bank Act is hereby repealed on the conversion date.

PASSED by the National Assembly this 19th day of July, 2012.

BARBARA N. DITHAPO,
Clerk of the National Assembly.