

BOTSWANA STOCK EXCHANGE (TRANSITION) ACT, 2015

No. 2



of 2015

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An Act to provide for the registration of Botswana Stock Exchange as a public company limited by shares under the Companies Act; for its continued existence as if it had been incorporated under that Act, and for matters incidental thereto.

Date of Assent: 15.01.2015

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

Short title and commencement	1. This Act may be cited as the Botswana Stock Exchange (Transition) Act, 2015, and shall come into operation on such date as the Minister may, by Order published in the <i>Gazette</i> , appoint.
Interpretation	2. In this Act, unless the context otherwise requires — “associate” means — (a) controllers, managers, principal officers and directors of the Company, including their spouses and children above the age of 18 years; and (b) any company which is a subsidiary, related company or holding company; “board” means the board of Directors of the Company referred to under section 5; “Company” means the Exchange as continued under section 3; “conversion date” means the date on which Botswana Stock Exchange is registered as a company; “Exchange” means the Botswana Stock Exchange established under the Botswana Stock Exchange Act; “Employee Share Ownership Plan” means a plan established under section 6 for the benefit of staff of the Company who are citizens; “Botswana Privatisation Asset Holding (Proprietary) Limited” means a company established by the Government for the purpose of holding assets from or in respect of, privatised public enterprises, with the object of the economic empowerment of citizens of Botswana; “Pension Fund” means the Botswana Stock Exchange Staff Pension Fund which is a defined contribution fund; “Registrar” means the Registrar of Companies appointed under the Companies Act; “Regulatory Authority” means the Non-Bank Financial Institutions Regulatory Authority established under section 6 of the Non-Bank Financial Institutions Regulatory Authority Act; and “securities broker” means a member of the Exchange who — (a) carries on the business of purchasing and selling or purchasing or selling listed securities on behalf of other persons; (b) regularly purchases and sells or purchases or sells listed securities on his or her own behalf; and (c) is an associate of the persons in paragraphs (a) and (b).
Cap. 42:01	
Cap. 46:08	

PART II -- *Registration, Conversion and Financial Interest*

3. (1) The Exchange may apply to the Registrar, in accordance with section 355 (4) of the Companies Act, to be registered as a public company limited by shares, and shall, upon registration, continue to exist as if it had been incorporated under that Act.

Registration and continuation of Botswana Stock Exchange

(2) The shareholding of the Company shall be open to the Government, securities brokers, employees of the Exchange and members of the public:

Provided that —

- (i) except as the Minister may by order permit, no person either individually or collectively other than the Government shall hold more than 10 percent of the share capital of the Company, and
- (ii) securities brokers acting individually or collectively shall not hold more than 20 percent of the share capital of the Company.

(3) On the conversion date, the Government and all persons who held proprietary rights in the Exchange immediately prior to conversion shall be allotted shares in the Company on such basis as may be determined by the Minister.

(4) The Company shall be deemed to be licensed as a non-bank financial institution under the Non-Bank Financial Institutions Regulatory Authority Act for a period of five years from the date of commencement of this Act.

(5) The Minister shall sign the constitution of the Company.

(6) The Company may use “Botswana Stock Exchange Limited” as its company name and be legally designated as such for all purposes.

4. (1) The Minister may, where the Exchange has converted to a company and after consulting the Exchange, prescribe —

Conversion of financial interest

- (a) the conversion of proprietary rights into share capital;
- (b) the conversion of subventions or other financial or material contributions received by the Exchange into share capital;
- (c) the formulation of an employee share option scheme for the employees of the Exchange; and
- (d) any other matter which the Minister may determine as necessary for the protection of the rights of any class of stakeholder of the Exchange.

(2) The Minister shall hold the financial interest of the Government in the Company.

5. Notwithstanding anything to the contrary contained in the Companies Act, the Minister shall appoint the following persons to hold office from the date of conversion until the first annual general meeting of the Company —

Appointment of office holders

- (a) the initial directors of the board;
- (b) the Company Secretary;
- (c) the public officer to the Company;
- (d) the auditors of the Company, who shall be professional accountants, registered under the Accountants Act or any other relevant Act and resident in Botswana.

Cap. 61:05

Employee
Share
Ownership
Plan

6. (1) As soon as is practicable after the conversion date, the Company shall establish an Employee Share Ownership Plan, on such terms as are determined by the Board and approved by the Minister.

(2) The Company shall reserve such percentage of its shares as the Minister may, by Order published in the Gazette, determine —

- (a) for allotment to the Employee Share Ownership Plan; and
- (b) for allotment to the Botswana Privatisation Asset Holding (Proprietary) Limited.

(3) An offer of shares to employees in terms of the Employee Share Ownership Plan shall, for purposes of the Companies Act, be deemed not to be an offer made to the public.

Tax exemptions
Cap. 52:01
Cap. 53:01

7. (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 —

- (a) the creation of the Company's initial share capital in terms of section 3 (2);
- (b) the issue of shares in the Company to the Minister;
- (c) the issue or transfer of shares in the Company from the Government;
- (d) the establishment of the Employee Shares Ownership Plan and the issue or transfer of shares in the Company to the Employee Shares Ownership Plan and the Botswana Privatisation Asset Holding (Proprietary) Limited in terms of sections 6 (2) (a) and (b) respectively;
- (e) the transfer of any assets or part of the business of the Company or any of its subsidiaries;
- (f) the transfer of any asset from the Company to any of its subsidiaries;
- (g) the transfer by the Company of any shares in any of its subsidiaries; and
- (h) anything done in order to give effect to —
 - (i) the acts referred to in paragraphs (a) to (f), or
 - (ii) the conversion of the Exchange from a statutory corporation to a public company, or the registration of the Company's constitution.

Cap. 50:01
Cap. 50:03

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

(3) The income of the Exchange shall be exempt from income tax for five years following the conversion date.

PART III – *Financial Provisions*

8. (1) During the period in which the Minister holds the Government's shares in the Company in trust for the Republic of Botswana and in order to enable the Company to discharge its functions and to meet its obligations, it may borrow money in accordance with its constitution, and on such terms and in such sums as it may require.

Borrowing powers

(2) Any borrowing by the Company under subsection (1) shall be in consultation with the Minister.

9. An auditor, appointed under section 5 (d), shall, in accordance with the provisions of Part XIII of the Companies Act as applicable, audit the accounts of the Company from the conversion date to the end of the financial year of the Company.

Accounts and audit

PART IV – *Miscellaneous*

10. (1) The Botswana Stock Exchange Security Fund established under the Botswana Stock Exchange Act shall continue in operation but shall be known as the Investor Compensation Fund.

Investor Compensation Fund

(2) The Botswana Stock Exchange Security Fund established under the Botswana Stock Exchange Act shall continue to operate in the same manner as it has been operating prior to the conversion date until it is amended by the Securities Act.

Act No. of 2014

11. From the conversion date, any reference to “wholly-owned Government corporation”, “statutory corporation” or any such similar reference in the following Acts shall not be deemed to be a reference to the Company –

Reference to certain terms

(a) the Bank of Botswana Act;

Cap. 55:01

(b) the Public Finance Management Act;

Act No. 17 of 2011

(c) the Public Audit Act; and

Act No. 15 of 2012

(d) the Pension and Provident Funds Act.

Cap. 27:03

12. The Botswana Stock Exchange Act is repealed from the conversion date.

Repeal of Cap 56:08

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

Savings and transitional provisions

(2) Any act lawfully performed by the Exchange before the conversion date, shall continue to be valid and shall be performed by the Company.

(3) Any legal proceedings pending immediately before the conversion date to which the Exchange was a party shall be continued as if the Company had been party thereto instead of the Exchange.

(4) All employees of the Exchange shall become the corresponding employees of the Company and shall continue in office for the period for which, and be subject to the conditions under which, they were appointed as employees of the Exchange.

(5) The Committee of the Stock Exchange established under the Botswana Stock Exchange Act shall, until otherwise determined by the Minister and subject to the constitution referred to under section 3 (5), serve as the initial directors of the Company.

(6) Any enquiry or proceedings, whether of a disciplinary nature or otherwise, instituted or pending in respect of any employee or member of the Exchange 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.

(7) The rules of the Exchange made under the Botswana Stock Exchange Act shall continue to apply until amended by the Securities Act.

(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.

(9) Any agreement entered into, made, executed or drawn up by, with or in favour of the central securities depository established under the Botswana Stock Exchange Act and in force immediately before the commencement of this Act shall continue to apply and be of force and effect.

(10) As of the conversion date, all assets and liabilities of the Exchange 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.

(11) All subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with this Act, continue in force as if made under this Act.

(12) Any licence issued immediately before the commencement of this Act shall be deemed to have been issued under this Act and shall remain valid until its expiry date.

PASSED by the National Assembly this 12th day of December, 2014.

BARBARA N. DITHAPO,
Clerk of the National Assembly.