

CHAPTER 72:05
BOTSWANA TELECOMMUNICATIONS CORPORATION (TRANSITION)
ARRANGEMENT OF SECTIONS

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Act 3, 1980,
S.I. 46, 1980,
Act 16, 1996,

Act 28, 2008.An Act to provide for the registration of Botswana Telecommunications Corporation under the Companies Act; for its continued existence as if it had been incorporated under that Act, and for matters incidental thereto.

[Date of Commencement: 31st December, 2008]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Botswana Telecommunications Corporation (Transition) Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**Authority**" means the Botswana Telecommunications Authority, established under the Cap. 72:03 Telecommunications Act;

"**board**" means the board of Directors of the Company established under section 5;

"**Company**" means Botswana Telecommunications Corporation, as continued under section 3;

"**conversion date**" means the date on which Botswana Telecommunications Corporation is registered as a company;

"Corporation" means the Botswana Telecommunications Corporation established under the Botswana Telecommunications Corporation Act;

"Employee Scheme" means an employee benefit scheme to be established by the Company for the purpose of offering participation in that scheme to employees of the Company and to employees of the Company's subsidiaries;

"existing licence" means the telecommunication service and telecommunication system licence issued to the Corporation by the Authority in terms of sections 27 and 28 of the Telecommunications Act;

"Investment Fund" 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;

"licensed service" means the telecommunication service which the Corporation is authorised to provide by and under the existing licence, as well as any other telecommunication service that the Corporation may be authorised to provide by virtue of a licence issued to it by the Authority in terms of the Telecommunications Act;

"Pension Fund" means the Botswana Telecommunications Corporation Staff Pension Fund which is a defined contribution fund;

"Registrar" means the Registrar of Companies appointed under the Cap. 42:01 Companies Act;

"subsidiary" has the meaning assigned to it under the Companies Act;

"telecommunication service" has the meaning assigned to it under the Telecommunications Act.

PART II

Registration, conversion and financial interest (ss 3-8)

3. Registration and continuation of Botswana Telecommunications Corporation

(1) The Corporation may apply to the Registrar in accordance with section 355 of the Cap. 42:01 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.

(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) The Minister shall sign the constitution or certify the documents detailing the constitution, as the case may be, of the Company.

(4) The Company may use "Botswana Telecommunications Corporation Limited" as its company name and be legally designated as such for all purposes.

4. Conversion of financial interest

(1) As of the conversion date, the financial interest of the Government in the Corporation shall be converted into-

- (a) shares in the capital of the Company; or
- (b) loans against the Company, and held by the Minister, on behalf of the Republic of Botswana.

(2) As of the conversion date, the Minister may, with the concurrence of the Minister responsible for finance-

- (a) acquire, hold, dispose of and otherwise deal with the financial interest of the Government in the Company; and
- (b) enter into any agreement or arrangement necessary or incidental to any activity referred to in paragraph (a);
- (c) where the Minister considers it appropriate, create and cause to be issued, new shares in the Company of different classes;
- (d) secure the subscription of other people to shares issued under paragraph (c);
- (e) issue or transfer such number of shares in the Company as the Minister considers

- appropriate, to the Investment Fund;
- (f) issue or transfer such number of shares in the Company, as the Minister considers appropriate, to the Employee Scheme;
- (g) exercise all the rights of the Government as shareholder in the Company, and in writing delegate, to any other person, the exercise of such rights.

5. Appointment of office holders

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-

- (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 certified public accountants, resident in Botswana.

6. Employee Scheme

(1) As soon as is practicable after the conversion date, the Company shall establish an Employee Scheme, 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 determine-

- (a) for future allotment to the Employee Scheme; and
- (b) for allotment to the Investment Fund.

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

7. Tax exemptions

(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 in terms of section 4;
- (c) the issue or transfer of shares in, or loans against, the Company from the Government to any person under section 4;
- (d) the establishment of the Employee Scheme and the issue or transfer of shares in the Company to the Employee Scheme and the Investment Fund 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 to any other person under section 4;
- (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 to any other person under section 4;
- (h) anything done in order to give effect to-
 - (i) the acts referred to in paragraphs (a) to (f),
 - (ii) the conversion of the Corporation 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 Act or Customs and Excise Duty Act.

8. Licences

The Company may apply to the Authority for additional licences authorising the Company to provide telecommunication services other than that which the existing licence authorises it to provide.

PART III **Financial Provisions (ss 9-10)**

9. Borrowing powers

(1) During the period in which the Minister holds 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.

(2) Any borrowing by the Company under subsection (1) shall be subject to the approval of the Minister responsible for finance.

10. Accounts and audit

The auditor appointed under section 5 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, with reference to the financial statements of the Corporation in respect of the three years preceding the conversion date.

PART V

Miscellaneous (ss 11-12)

11. Savings and Transitional

(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 Corporation from vesting in the Company as assets or liabilities of the Company.

(2) Any act lawfully performed by the Corporation under the Botswana Telecommunications Act and before the conversion date, shall continue to be valid and shall be performed by the Company.

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

(4) All employees of the Corporation 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 Corporation.

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

(6) 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.

12. Reference to certain terms

From 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-

- (a) Bank of Botswana Act;
- (b) Finance and Audit Act; and
- (c) Pension and Provident Funds Act.

13. Repeal of Cap. 72:02

The Botswana Telecommunications Corporation Act is repealed from the conversion date.