



Botswana  
Institute of  
Arbitrators

## MINUTES

### ANNUAL GENERAL MEETING

**HELD ON 11 APRIL 2018**

At 18:00 Hrs, at the Bull & Bush - Gaborone

The Chairman of the Executive Committee Mr. Tengo Rubadiri opened the meeting and welcomed all present.

1. The Agenda was adopted unanimously.  
Proposed Sanjeev Miglani  
Seconded Stephen Sedie
2. The minutes of the AGM 2017, held on the 12 April 2017, and emailed to the members on the 26 April 2017 12:24, were confirmed with no corrections, and approved.  
Proposed Tony Allen.  
Seconded Casmir Jongman.
3. While delegate Members kept arriving, the Chairman started proceedings at 18:05 by introducing the guest speaker Alexandra (Alex) de Beer, responsible for the Commercial Programmes of the Royal Institute of Chartered Surveyors (RICS), introduced by Charlene to entertain the gathering with RICS's 150 years anniversary, and its achievements around the world.
4. The attendance register was signed by all the present.

**PRESENT (BIArb members):**

1. Allen Tony
2. Apadile Litlallo
3. Chiwila Amos G.
4. Gachala Tapiwa
5. Glendinning David
6. Ginder Andor
7. Himayumbula Terryson
8. Hwata Mildred
9. Jongman Casmir
10. Lekhutile Isang

11. Manis Gianni
12. Maotwanyane Gabriel
13. Miglani Sanjeev
14. Mogapi Floyd M.
15. Monthe K. N.
16. Motsumi Tshiamo James
17. Namponya Wame
18. Osei-Ofei Kwadwo
19. Palmitessa-Savric P.
20. Phala Kelly
21. Reynolds Reg
22. Robinson Joanne
23. Rubadiri Tengo
24. Ruhukwa Don
25. Sedie Stephen
26. Seikano Hlompho
27. Sibanda Gibson
28. Van Riet-Lowe Charlene
29. Vandecasteele Brigitte

#### PROXIES:

- |     |                         |                          |
|-----|-------------------------|--------------------------|
| 30. | Bwalya Lumbwe           | (proxy – the Chairman)   |
| 31. | Flanagan Andy           | (proxy – Gianni Manis)   |
| 32. | Marinelli Jennifer Mary | (proxy – the Chairman)   |
| 33. | Moss Stephen Andrew     | (proxy – D. Glendinning) |

#### PRESENT (non BI Arb members):

34. de Witt Riaan
35. Alexandra de Beer

#### APOLOGIES

1. Anderson J; 2. Chitita R; 3. Fashole-Luke II E; 4. Flanagan AG; 5. Lumbwe B; 6. Marinelli JM; 7. Marinelli M; 8. Mitchell EP; 9. Monageng SM; 10. Moseki LK; 11. Moss SA; 12. Stevens JY; 13. Stuart DMB; 14. Watson M.

#### ABSENT

Abdulla AR; 2. Bookbinder JS; 3. Bothlole KS; 4. Brick TM; 5. Carr-Hartley JK; 6. Collins P; 7. Dambe T; 8. Desai RK; 9. Griffith JM; 10. Keakantse C; 11. Kindiano M; 12. La Mance OS; 13. Lyamuya PK; 14. Moahi LT; 15. Modisi N; 16. Mphengula M; 17. Muzimo P; 18. Okumbe JO; 19. Ontumetse GJ; 20. Otladisa O; 21. Peo C; 22. Pinard MI; 23. Radipata LL; 24. Sethusha NC; 25. Shama P; 26. Syakayuwa M; 27. Tafila TT;

#### 5. Chairman's report

Tengo Rubadiri presenting his report, emphasised the achievements of the past year in the following heads:

- 5.1. "THE EXECUTIVE COMMITTEE" – marked by the resignation of William Lee for personal reasons; the contribution to the

- committee of Gianni as the secretary and Charlene as the new treasurer; the contribution of the co-opted additional members Don Ruhukwa and Stephen Sedie. And finally the departure from the committee of Marina and Gianni, as they both not available for re-election.
- 5.2. "THE MEMBERSHIP" – with an unprecedented growth of members' admitted during the year in all class of membership, from within Botswana and Internationally.
  - 5.3. "EVENTS" – with the participation to the Arbitration Conference hosted by CIArb in Johannesburg, that attracted delegates from all over the world.
  - 5.4. "THE PROPOSED NEW ARBITRATION ACT AND TRADE DISPUTES ACT" – (a) the persistent efforts of the executive committee towards the project of updating an old and outdated Arbitration Act, despite so many difficulties and drawback. This project is now sponsored by the Ministry of Justice, Defence and Security. And (b) the invitation to be part of the committee formed to review the Rules for the Conduct of Arbitration proceedings under the Trade Disputes Act.

The full Chairman Report is attached hereto.

Report adopted by Tony Allen

Seconded by Tshiamo Motsumi.

6. Secretary report.

The report of the secretary contain the list of activities and achievements of the executive committee recorded during the year:

- 6.1. the completion of the website that offers to the "world" a full and transparent image of BIArb;
- 6.2. the right marketing of the Institute, which have attracted a considerable number of new members – 23 in total – 1 ordinary, 2 fellows, and 20 associates;
- 6.3. The revamping of the newsletter, through the efforts of Charlene that have driven the project. It remain to keep it going on a quarterly basis.
- 6.4. The enrolment of the Institute with Business Botswana to get the chance to report on the HLCC the activities of BIArb, for Parliament to become aware that BIArb exist and is well active to assist resolving disputes with the options of ADR, successful worldwide.
- 6.5. Dealing with the registrar on the matter of proxies, whereby he say that anyone member should not hold more than one proxy to form a quorum when changes to the constitution are to be voted. The provisions at clause 10.3 of the constitution does not restrict the number of proxies that anyone member can hold. We wait for the Registrar's comments in writing, so they can be dealt with appropriately.
- 6.6. Assisted few members of the public applying for the nomination of arbitrators and DAB.

The full secretary Report and latest members' list are attached hereto.  
Report adopted by Tony Allen  
Seconded by Tshiamo Motsumi.

7. Treasurer's report

- 7.1. Charlene van Riet-Lowe presented the report, which was previously circulated attached to the notice of the AGM. The report is summarised as follows:
- 7.2. Total income for the year P 78,320-00, and expenses P 27,745-00.
- 7.3. Provision for tax liabilities P 11,168-00  
Cash balance P 123,718-00, making the financial position of BIA good and sound;
- 7.4. Members need to think at meaningful projects to spend the money, to reduce tax liability, but also in fulfilment of the very purpose of the Institute;
- 7.5. Immediate plans are in place to print an A5 format full colour brochure, banners, and other material.
- 7.6. The fees for the current year have remained unchanged from the previous year, and will remain so for 2019. They are:
- |              |   |
|--------------|---|
| Fellow       | P 1,000-00  |
| Associate    | P 750-00  |
| Member       | P 500-00  |
| Corporate    | P 1,000-00  |
| Entrance fee | P 500-00  |
| Deposit      | P 1,500-00 non refundable for service of appointment or nomination of arbitrators                     |
| Charges      | P 1,500-00 per hours for services required by the public; to be quoted ad-hoc, on case by case basis. |

The full annual financial statement is attached hereto.  
Report adopted by Tony Allen  
Seconded by Tshiamo Motsumi.

8. The Chairman open the session for comments on the reports:

- 8.1. Kwadwo Osei-Ofei suggested that funds should be spent to market the relevance of BI Arb to fill a gap – Courts are overloaded with cases and waiting times are too long.
- 8.2. Gabriel Maotwanyane commented that the Institute need more response from members – he suggested to create more links to give easy access as to the activities of BI Arb.
- 8.3. He also suggested it would be very successful to organise an annual conference on arbitrations, mediations and other forms of ADR.
- 8.4. Sanjeev Miglani commented that people have difficulties in passing the exam for module 3 and 4 due to time constraints and difficulties to understand the papers – yet, workshops organised in the past to help, resulted to be poorly attended.
- 8.5. Tony Allen said that exams lately are difficult. He offered his collection of journals from 1981 to-date as an encouragement to

start a sort of library. Charlene requested the website links to publish it on the newsletter.

He also confirmed that his plans to relocate and leave Botswana have changed.

- 8.6. The issue of poor attendance to conferences and workshops was shared by Kwadwo and Tengo, including the aggravation of losses from booking of venues and not recovering the costs.
- 8.7. Kgalalelo Monthe offered to share with BIArb the database of members at Law Society, to widen reach and exposure.
- 8.8. Terryson Himayumbula shared his view on the registrar argument on the issue of proxies, and questioned the legitimacy of a situation of two members with twenty proxies being empowered to hijack the whole Institute. Tengo appreciated the comment and reiterated that once we receive a formal note from the registrar we will know what action to take; meanwhile, the constitution is good as it was submitted and accepted.  
On the same issue Brigitte Vandecasteele suggested that proxies should be formally designed whereby the person giving a proxy must indicate his credentials, ID document, and preferences in case of vote.

#### 9. Nomination of 2018/2019 Executive Committee.

The process of retirements, nominations and acceptance took place without needs for elections.

The EXCO for 2018/2019 is therefore as follow:

- 9.1. Mr Tengo Rubadiri nominated by Kgalalelo Monthe.
- 9.2. Mrs. Charlene Van Riet-Lowe stand for 2<sup>nd</sup> year.
- 9.3. Mr Andor Ginder nominated by Sanjeev Miglani.
- 9.4. Mr Sanjeev Miglani nominated by Patricia Palmitessa-Savric
- 9.5. Mr. Don Ruhukwa nominated by Tengo Rubadiri
- 9.6. Ms. Joanne Robinson nominated by Kwadwo Osei-Ofei
- 9.7. Mrs. Litlallo Apadile nominated by Charlene van Riet-Lowe
- 9.8. Ms. Tapiwa Gachala nominated by Charlene van Riet-Lowe

Tony Allen proposed all nominated “on block”  
Kwadwo Osei-Ofei seconded proposal.

At its first meeting after the AGM, the EXCO shall elect the office bearers.

#### 10. Revisions of the Constitution and the Rules:

Tony Allen proposed that the two proposed changes to the Constitution, and one change to the Rules deliberated and approved at the 2017 AGM are submitted “in block” to the registrar again.

In summary, they are:

##### 10.1. Clause 6.2 and 6.3.

Date by which yearly subscription fees must be paid.

The proposed amendment is to substitute “1<sup>st</sup> January” with “31<sup>st</sup> January”.

## 10.2. Clause 5.1.2.

This clause for eligibility to Fellow category should read:

Fifth line: “ ..., no person shall be elected as a fellow who has not been as associate for five consecutive years .... “ followed by:

5.1.2.1 has passed the fellowship examination as prescribed by the Association of Arbitrators (Southern Africa) or the examinations as prescribed by an analogous arbitral body (the fitness of which body shall be in the discretion of the Executive Committee); or

5.1.2.2 is a person, in the discretion of the Executive Committee, of exceptional merit.

## 10.3. Rule 35.4.

The amendment proposed was: “provided in all cases the Arbitrator shall be entitled to withhold the issue of an Award to the parties until such time that the Arbitrator is paid in full for the services”, or, exercise the “right of Lien” on the award until all fees are paid, which is the same thing.

## 11. A.O.B.

11.1. Kwadwo expressed reservation on the suitability of the venue for the purpose of an AGM; although a nice place, it was too noisy. Tengo had taken the point and accepted that more privacy would have been better.

11.2. Riaan de Witt, who was introduced by Charlene lives in Namibia. He will share with us the newsletter of his association.

12. The meeting closed at 19:45 – the Chairman thanked every body and wished well to all.

It followed snacks and drinks for delegates to enjoy fellowship.

## ATTACHMENTS:

1. Chairman report
2. Secretary report
3. Treasurer report
4. Membership list

The above minutes were confirmed as correct during a meeting held on

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\_\_\_\_\_ Chairman

\_\_\_\_\_ Secretary