



Botswana  
Institute of  
Arbitrators

## MINUTES

### ANNUAL GENERAL MEETING

**HELD ON 12 APRIL 2017**

At the offices of Bookbinder Business Law Firm, I-Tower, 9<sup>th</sup> Floor, CBD - Gaborone

The Chairman Mr Tengo Rubadiri opened the meeting at 18:15 by welcoming all present.

1. The Agenda was adopted unanimously with the addition of “adoption of the Minutes of AGM 2016”.  
Proposed Sanjeev Miglani  
Seconded Jenny Marinelli
2. The minutes of the AGM 2016 having being distributed timeously immediately after the AGM with no correction recorded, were approved.  
Proposed by Tony Allen.  
Seconded Jenny Marinelli.
3. The attendance register was signed by the present.  
The Chairman Tengo Rubadiri thanked Jeff for putting his offices at the disposal of the AGM, and after verifying that the attendance met the Quorum required of 24 Members, opened the meeting at 18:15, and started proceedings.

PRESENT (BIArb members):

1. Tengo Rubadiri
2. S Miglani
3. Gabriel Maotwanyane
4. Gianni Manis
5. Amos Chiwila
6. Jenny Marinelli
7. Tony Allen
8. Kwadwo Osei-Ofei
9. William Lee
10. Casmir Jongman
11. Patrizia Palmitessa-Savric
12. Edward Fashole-Luke II

13. Charlene Van Riet-Lowe
14. Kgalalelo Nneiseng Monthe
15. Jeffrey Bookbinder
16. Marina Mpugwa

PRESENT (by proxy):

- |                              |                                |
|------------------------------|--------------------------------|
| 17. Andor Ginder             | (proxy – P. Palmitessa-Savric) |
| 18. Gibson Sibanda           | (proxy – T. Rubadiri)          |
| 19. Tshiamo James Motsumi    | (proxy – T. Rubadiri)          |
| 20. Bwalya Lumbwe            | (proxy – the Chairman)         |
| 21. David Glendinning        | (proxy – T.K. Moswela)         |
| 22. Onalenna Otladisa Diloru | (proxy – J. Bookbinder)        |
| 23. Kusigani Mbambo          | (proxy – J. Bookbinder)        |
| 24. Chabo Peo                | (proxy – J. Bookbinder)        |
| 25. Chatapiwa Keakantse      | (proxy – J. Bookbinder)        |
| 26. Massimo Marinelli        | (proxy – the Chairman)         |
| 27. Terence Brick            | (proxy – the Chairman)         |

PRESENT (non BI Arb members):

28. T.K. Moswela, proxy for D. Glendinning.

APOLOGIES

1. J.Y. Stevens; 2. J.M. Griffiths; 3. A.G. Flanagan; 4. M. Watson; 5. M.I. Pinard; 6. D.M.B. Stuart; 7. P.K. Lyamuya; 8. A.R. Abdulla; 9. B. Liu; 10. B. Vandecasteele; 11. S. Sedie; 12. Msiya Kindiano.

ABSENT

1. R.K. Desai; 2. T. Dambe; 3. T.T. Tafila; 4. J.K. Carr-Hartley; 5. S.A. Moss; 6. J.O. Okumbe; 7. P. Collins; 8. N. Modisi; 9. K.C.K. Phala; 10. L.K. Moseki; 11. G. Sibanda; 12. G.J. Ontumetse; 13. K.S. Botlhole; 14. L.T. Moahi; 15. P. Muzimo.

4. Chairman's report

Tengo Rubadiri highlighted the contribution and advice given by former Chairman Tony, although not in the committee, in addition to the work of his fellow committee members with their commitment to ensure meetings and affairs of the Institute were kept diligently up to date. Also the custody of the Constitution is taken care of by ensuring that, where there are ambiguities, these are brought to the attention of the AGM for discussion and revision.

He further shared the continuous, so far unsuccessful, efforts to produce a new Draft Arbitration Act that can be acceptable to replace the current "old" one.

Comments to the report:

Tony Allen raised the issue of the extensive work done over many years on the Draft new Arbitration Act, with the continuous assistance of professor David Butler of RSA, who is regarded as a luminaire on arbitration matters within the whole Southern African region.

Edward Fashole-Luke II prompted to keep in touch with Steve Tiroyakgosi at the AG office.

Kgalalelo Nneiseng Monthe offered to take an active role from his chair at the Law Society, and contribute to finalise the document.

Overall, the meeting agreed to continue working of the draft until adoption; an additional strategy will be to find ways and means to involve the major professional associations of Botswana to the contribution to this work; they will be required to highlight their specific needs and how they would like to be protected and be included in the draft.

The full Chairman Report is attached hereto.

Adoption of the Report proposed by Sanjeev Miglani

And seconded by Jenny Marinelli.

#### 5. Secretary report

Gianni Manis presented his report that is summarised in the achievements of the Institute with regard to: (1) having the website completed, tested, and up and running for the “world” to have access to BIA; (2) the right marketing of the Institute, which have attracted a considerable number of new members; (3) thanks to Jenny and Sanjeev efforts, the revamping of the newsletter, as a mean of connecting to the Members, after years of silence; (4) working to link with Business Botswana, through the efforts of Marina, in order to get the chance to report on the HLCC the activities of BIA, and how it serve the needs of Botswana in matters of ADR; also for Parliament to be aware that BIA exist and is well active; (5) and lastly, to have settled long outstanding tax liability with BURS, thanks to the efforts of Jenny.

Amongst others, Edward Fashole-Luke II shared that the former AG, Mrs Malokomme has indicated her intention to apply for membership; Tengo Rubadiri has confirmed that a judge to the International Court, Mrs. Sanji Mmasenono Monageng, has applied for membership. Present requested the Draft New Act to be distributed once more.

The full secretary Report and members’ list are attached hereto.

Adoption of the report proposed by Edward Fashole-Luke II

And seconded by Jeff Bookbinder

#### 6. Treasurer’s report

6.1 Jenny Marinelli presented the report, which was previously circulated attached to the notice of the AGM. The report is summarised as follows:

6.2 Financial position of BIA is sound and in credit of +/- P110,000-00;

6.3 The EXCO need to think at meaningful projects to spend wisely the money, to reduce tax liability, but also in fulfilment of the very purpose of the Institute;

6.4 To organise workshops, possibly with participation of the AG officers;

6.5 Fees applicable for the current fiscal year are proposed as follows:  
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 AGM approved them unanimously.

- Jeff Bookbinder congratulated the work well done by Jenny.
- Edward Fashole-Luke II reported that while he attended the ICC symposium in Paris he negotiated to have an International conference held in Gaborone in the near future – the plan was perceived very exciting by the present.
- Approval and adoption of the annual financial statements 2016 was proposed by Edward Fashole-Luke II and seconded by Jeff Bookbinder.

7. Nomination of 2017/2018 Executive Committee.

Current EXCO excluding the retiring Members was suggested to be elected “on block with the addition of Charlene Van Riet-Lowe” by Tony Allen.

Proposed by Kwadwo Osei-Ofei,  
And seconded by Edward Fashole-Luke II.

The EXCO for 2017/2018 is therefore as follow:

- 7.1. Tengo Rubadiri (current chair).
- 7.2. William Lee (current vice-chair).
- 7.3. Giovanni Manis (current secretary).
- 7.4. Sanjeev Miglani.
- 7.5. Marina Mpugwa Bathuleng.
- 7.6. Charlene Van Riet-Lowe.

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

8. Revisions of the Constitution and the Rules:

It followed an ample and live debate on the three proposed changes to the Constitution, and one change to the Rules. The consensus of the AGM was as follows:

8.1. 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”.

Accepted unanimously.

Proposed by Kwadwo Osei-Ofei  
And seconded by Edward Fashole-Luke II

8.2. Clause 10.3.

The proposed amendment was to include “there shall be no limit as to the number of proxies a member may bring”.

Rejected – no need to change the way it reads.

8.3. Clause 5.1.2.

The proposed amendment was motivated by the perception of the current EXCO that, given the discretion to the EXCO as it reads presently, different EXCO assessing different applications at different times will be inconsistent in their deliberations.

Comments from the floor included the following:

Tony Allen: clarified that two applications were assessed during his years as Chairman of EXCO, for change status to “Fellow”. In both cases the EXCO deliberated positively on the basis of extreme merits.

Tengo Rubadiri queried how does one weight “extreme merits”, and does it actually mean.

Jeff Bookbinder: he clarified that the Institute is formed of Members with diverse professional qualifications. He recon, for example, that lawyers may find it easier to become Fellows than engineers, living it to the discretion of the EXCO.

He further added that in RSA only individuals practicing as Advocates may be admitted as Arbitrators automatically.

Sanjeev Miglani: supported what Jeff said. He further said that under India regulations an individual cannot be an Arbitrator just because he is a Judge for example.

Kwadwo Osei-Ofei: he agreed that EXCO should not be guided by its discretion in deliberating on an application for fellowship.

He agreed to (1) remove the EXCO discretion component, and (2) add the requirement whereby exams must be passed to become Arbitrators.

Patrizia Palmitessa-Savric: she added that arbitration cases adopt different laws, depending on the parties’ choices, making it even more demanding for an Arbitrator to be properly qualified to do his job.

Finally, Jeff Bookbinder undertook to word the new Constitution’s Clause for the AGM to consider and deliberate.

Presently the Clause reads as follows:

- 5.1.2 fellows – who shall be members who are not less than thirty five years of age and who have been elected fellows by the Executive committee on account of particular expertise and experience in the field of arbitration provided that, save in the case of a person who has become a fellow within five years of the date of the establishment of the Society, no person shall be elected as a fellow who has not been an associate for five consecutive years unless the Executive Committee shall, in the case of exceptional merit, have waived this requirement;

Fifth line:

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

- 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.

Accepted unanimously.

Proposed by Tengo Rubadiri

And seconded by Jenny Marinelli

#### 8.4. 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.

Accepted unanimously.

Proposed by Kwadwo Osei-Ofei

And seconded by Jenny Marinelli

9. The meeting closed at 20:20 after recording the following comments:
- 9.1. The secretary to send the latest “Draft New Act” to all Members for further considerations and comments.
- 9.2. Tony Allen offered his collection of journals from 1981 to-date as an encouragement to start a sort of library.
- 9.3. Kgalalelo Nneiseng Monthe intend to exploit a USA or UN sponsored model of arbitration, and possibly make Botswana a centre for arbitrations as an example for Southern Africa.  
A “layman” draft with the possible involvement of the Minister of Justice, the Attorney General, and BTV.
- 9.4. Patrizia Palmitessa-Savric suggested to up-date the Rules to adopt the UNCITRAL law, to make it a part of our own rules of procedures.

ATTACHMENTS:

10. Chairman report
11. Secretary report
12. Membership list
13. New Act Draft executive summary
14. New Act Draft

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

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Chairman

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Secretary