



# CENTRAL SECURITIES DEPOSITORY

B O T S W A N A

## SETTLEMENT GUARANTEE FUND RULES

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## 1. DEFINITIONS

- 1.1. **'Act'** means the Securities Act Cap 56:08 of the laws of the Republic of Botswana, as amended from time to time.
- 1.2. **'BWP'** means the denomination for the official currency in Botswana;
- 1.3. **'Committee'** means the Settlement Guarantee Fund Committee;
- 1.4. **'Correspondent Bank'** means commercial banks in Botswana appointed by the Depository Settlement Participants as their settlement banks;
- 1.5. **'CSD'** means the central securities depository system through which trading of Securities on the Exchange are cleared and settled;
- 1.6. **'CSDB'** means Central Securities Depository Company of Botswana Limited;
- 1.7. **'Depository Settlement Participants'** means depository participants who act as intermediaries between the CSDB and investors, which shall include Securities Brokers, Custodians, Market Makers, Primary Dealers;
- 1.8. **'Exchange'** means the Botswana Stock Exchange Limited;
- 1.9. **'Guarantee Fund'** means the Settlement Guarantee Fund established in terms of these Rules;
- 1.10. **'Initial Contribution'** means the initial amount contributed into the Guarantee Fund by the Depository Settlement Participants;
- 1.11. **'Rules'** means these Settlement Guarantee Fund Rules;
- 1.12. **'Securities'** shall have the same meaning as ascribed in the Securities Act;
- 1.13. **'Settlement Bank'** means the Bank of Botswana;

1.14. **'Top-Up Amount'** means an additional contribution that may be determined by the Committee at a particular time, when it is deemed necessary to do so from the view point of the Guarantee Fund operation.

## 2. NAME OF FUND

The name of the fund shall be the Central Securities Depository Botswana (CSDB) Settlement Guarantee Fund, herein referred to as "The Guarantee Fund".

## 3. INTRODUCTION

3.1. The CSDB Board of Directors shall establish the Guarantee Fund, which shall be managed, administered and utilized by CSDB to satisfy any liability arising from a default by any of the Depository Settlement Participants in discharging their obligations, thus minimizing settlement risk.

3.2. The CSDB shall put in place a guarantee that trades will be settled among Depository Settlement Participants thus ensuring that the selling Depository Settlement Participant will deliver the securities and that the buying Participant will effect payment. The SGF shall only settle transactions that are equal or less than the SGF amount. The Fund shall only cover spot transactions of a T+3 settlement cycle

3.3. The Depository Settlement Participant shall make contributions to the Guarantee Fund in BWP in order to compensate any damages caused by non-fulfilment of settlement obligations **of the buyer**.

3.4. Settlement Risk establishes itself in two forms:

3.4.1. Securities settlement failure; this occurs where the financial risk is equal to the difference between the initial trading price of the transaction and the price at which the replacement of Securities can be bought; and

3.4.2. Funds settlement failure; this occurs where the financial risk is equal to the net settlement obligation.

## 4. PURPOSE OF THE GUARANTEE FUND

- 4.1. To ensure financial integrity in the securities market in Botswana.
- 4.2. To meet default obligations, shortfalls, deficiencies and or any other defaults during clearing and settlement of trade transactions by CSDB.
- 4.3. To enhance investors' confidence in the securities market of Botswana.
- 4.4. To guarantee that settlements of trade transactions for Depository Settlement Participants are executed as scheduled.

## 5. SCOPE OF THE GUARANTEE FUND

- 5.1. The Guarantee Fund shall cover transactions for Securities traded on the Exchange whose clearing and settlement is done using delivery versus payment model. Delivery versus payment model is the simultaneous settlement of transactions, that is cash and Securities.
- 5.2. The Depository Settlement Participants shall take joint responsibility for any damages caused by non-fulfilment of settlement obligations for transactions subject to settlement within the scope of the Guarantee Fund. The Guarantee Fund is a last resort instrument to guard against misuse and market indiscipline.
- 5.3. All CSDB Depository Settlement Participants shall contribute to the Guarantee Fund.

5.4 Settlement Guarantee Fund fee shall be introduced on investors trading and settling through the ATS and CSD platforms. The SGF fee of 0.01% shall be incurred on transactions executed (buy and sell).

- 5.5 -4. The Guarantee Fund does not protect against losses suffered as a result of an investment dealer failure or malpractice. This type of protection is provided for by the Investor Compensation Fund.

## 6. OVERSIGHT OF THE GUARANTEE FUND

- 6.1. Overall oversight of the Guarantee Fund shall vest with the CSDB Board of Directors.
- 6.2. The CSDB Board of Directors shall appoint, from among its members, a committee to be known as the Settlement Guarantee Fund Committee (the Committee).
- 6.3. The Committee shall comprise three independent CSDB Board members, one of who shall be a representative of Participants in the CSDB Board, the Chief Executive Officer and the Head of Clearing and Settlement shall be ex-officio members of the Committee.
- 6.4. A Committee member shall serve for a 2 (two) year term, and be eligible for re-election for (2) two more terms.
- 6.5. The Board Secretary of the CSDB shall act as the secretary to the Committee.
- 6.6. The Committee shall meet a minimum of four times per year.
- 6.7. Members of the Committee shall discharge their responsibilities in accordance with the provisions of the Guarantee Fund Rules.
- 6.8. The Committee shall have the discretion as to when to call for payment of a Top Up Amount.

## 7. MANAGEMENT AND ADMINISTRATION OF THE GUARANTEE FUND

- 7.1. The CSDB shall be vested with the day-to-day management and administration of the Guarantee Fund.
- 7.2. Management and administration of the Guarantee Fund shall among others include:
  - 7.2.1. Ensuring Depository Settlement Participants have made Initial Contributions;

- 7.2.2. Monitoring transactions made in the Guarantee Fund bank account;
  - 7.2.3. Checking whether there is a need to make a top up to the Guarantee Fund bank account by the Depository Settlement Participants;
  - 7.2.4. Investing the assets of the Guarantee Fund;
  - 7.2.5. Draw down of funds from the Guarantee Fund to cover settlement defaults.
- 7.3. The CSDB shall deduct statutory fees, audit fees and administration fees being 1% of the value of assets in the Fund. The CSDB Board of Directors shall have the right to review the management fee from time to time and where necessary.

## 8. MEMBERSHIP

- 8.1. Membership of the Guarantee Fund shall be open to Depository Settlement Participants who shall contribute in accordance with the provisions of these Rules.
- 8.2. To be admitted as a member of the Guarantee Fund, a Depository Settlement Participant shall demonstrate that they have been admitted as a participant in terms of the CSDB Rules.
- 8.3. All Depository Settlement Participants shall be jointly and severally liable for the fulfilment of their obligations arising from Securities transactions for which CSDB has carried out clearing and settlement in accordance with the CSDB Rules.
- 8.4. The subject of joint and several liabilities referred to above shall not include the obligations of the Depository Settlement Participants to pay fees for services rendered, or the payment of any fines or charges imposed.
- 8.5. Upon admission, a Depository Settlement Participant shall enter into an agreement with the CSDB specifying their mutual rights and obligations towards the Guarantee Fund and the effects of their

failure to discharge their obligations towards the settlement of their transactions and any other issues relating to clearing and settlement.

## 9. FUND CONTRIBUTION

- 9.1. The Initial Contribution to the Guarantee Fund shall be an amount of BWP 10 000 000.00.
- 9.2. The CSDB shall pay half (50%) of the Initial Contribution and the other half shall be paid in equal proportions by the Depository Settlement Participants.
- 9.3. Depository Settlement Participants may make contributions to the Guarantee Fund using cash, until such time where CSDB shall advise on other forms of contributions to the Fund ~~Government bonds, letters of credit or any other liquid instruments as may be determined by the CSDB from time to time.~~
- 9.4. The Depository Participants shall be required to ensure that they have or that they arrange for funded credit lines with the Settlement Banks to ensure that fund settlement is always completed.
- 9.5. After the Guarantee Fund has been established, the Initial contribution of any new Depository Settlement Participants to the Guarantee Fund shall be based on the current value of the Guarantee Fund divided by the number of participants, less the contribution of the CSDB.

## 10. OPERATION OF THE GUARANTEE FUND

- 10.1. Upon admission, a Depository Settlement Participant shall pay an Initial Contribution to the Guarantee Fund account opened with any of the commercial banks in Botswana as the Committee, on approval of the CSDB Board of Directors, may determine.

~~10.2. In the event a contribution is made to the Guarantee Fund using Government bonds or any acceptable Security as maybe determined from time to time, the said contributions shall be made by way of pledging the Securities into a Guarantee Fund account~~



~~that shall be opened through the CSDB in the CSD system.  
Acceptable securities shall include shares, bonds and BOBCs.~~

- 10.23. The Guarantee Fund shall maintain the fixed/initial minimum contribution determined by CSDB Board of Directors at all times.
- 10.34. The Top Up Amount contributions of Depository Settlement Participants to the Guarantee Fund shall be reviewed quarterly or as and when the need arises.
- 10.45. The review of the Top Up Amount will be determined based on the settlement activities of the Depository Settlement Participants. In conducting this review, the settlement amount/ trading activities of a Depository Settlement Participant as a ratio of total settlement of all Depository Settlement Participant in the previous quarter will be considered.
- 10.56. The CSDB shall determine and notify each Depository Settlement Participant by the end of each quarter; the required Top-Up Amount.
- 10.67. The CSDB shall notify a Depository Settlement Participant of any proposed increase in their Initial Contribution at the end of every financial year.
- 10.78. In the event of the depletion of the amount in the Guarantee Fund bank account, for the purpose of meeting the said shortage, the Depository Settlement Participant whose actions or omissions have caused the shortage shall be required to replenish the shortfall by the close of five (5) business days from the date of settlement.
- 10.89. Should a Depository Settlement Participant's previous Top Up Amount to the Guarantee Fund exceed the required level of its contribution for the current quarter, the Depository Settlement Participant shall be entitled to withdraw the difference from the Guarantee Fund.
- 10.910. If a Depository Settlement Participant fails to pay any Top Up Amount when called upon to do so within 5 business days from the date of receipt of the invoice, the CSDB shall take disciplinary action

against the Depository Settlement Participant in terms of the CSDB Rules.

10.1011. The Guarantee Fund shall be indemnified for both compensated amounts and all the expenses incurred therefrom against a Depository Settlement Participant who does not fulfil its settlement obligation.

## 11. ALLOCATION OF INTEREST ON THE GUARANTEE FUND'S INVESTMENTS

11.1. Cash contributions shall be deposited into the Guarantee Fund bank account.

11.2. Interest accruing in the Guarantee Fund bank account shall be managed and administered in accordance with an investment policy determined by the CSDB Board of Directors. The policy should aim to enhance the assets of the Guarantee Fund in the medium to long term.

11.3. Any interest received from cash deposits, and coupon payments from bonds contributed which are in excess of the Initial Contribution (less CSDB fees and maintenance fees) shall be accrued to the Depository Settlement Participants not in default of their obligations under these Rules.

11.4. The CSDB shall calculate the portion of interest earned on the Guarantee Fund's investment or deposits according to the terms agreed.

11.5. Interest shall accrue to the Depository Settlement Participants at least annually and in proportion to the amount (contribution ratio) and time that such Depository Settlement Participant's contribution has been deposited into the Guarantee Fund's bank account.

~~11.6. Coupon payments arising from bonds and dividends arising from shares shall be refunded to Depository Settlement Participants.~~

~~11.7. Refunds on Securities should be made by way of releasing the pledge either partially or in full.~~

11.~~68~~. The apportionment of interest shall be carried out after a final report from an external auditor.

11.~~79~~. A Depository Settlement Participant shall not transfer its right to demand a refund from the Guarantee Fund to a third party nor provide same as collateral.

11.~~810~~. Charges and fees arising from the Guarantee Fund's management and administration shall be allocated to individual Depository Settlement Participants, in proportion to the amount contributed by the Depository Settlement Participant.

11.~~911~~. The CSDB shall prepare a quarterly report on investments made with respect to the Guarantee Fund detailing all movements in the Guarantee Fund bank account. The report shall be shared with the Depository Settlement Participants.

## 12. UTILIZATION OF THE GUARANTEE FUND

~~If a Depository Settlement Participant fails to pay for its obligations, the CSDB will use assets of the Guarantee Fund contribution to cater for the net settlement of the Depository Settlement Participant who failed to honour their obligations. The funds will be credited in the settlement account of the Depository Settlement Participant's correspondent bank not later than 9:30 am on settlement day.~~

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## 13. INSUFFICIENCY OF THE GUARANTEE FUND'S AMOUNT

13.1. If the Guarantee Fund's account does not have sufficient funds to cover the Depository Settlement Participant's obligations due to settlement failure, the following shall apply:

- 13.1.1. Upon receipt of information from the Settlement Bank that funds are insufficient to cover the net settlement of trade transactions of all Depository Settlement Participants; the Guarantee Fund will be activated to cover the short fall in the account/s.
  - 13.1.2. The Settlement Bank shall inform CSDB which Depository Settlement Participants have failed to fully cover their settlement obligations;
  - 13.1.3. ~~The CSDB shall issue an instruction to credit the affected clearing accounts at the Settlement Bank with the deficient amount; Funds in the SGF account shall be invoked to cover the deficient amount;~~
  - 13.1.4. The commercial bank at which the Guarantee Fund is kept shall inform CSDB through an invoice on the related expenses, interest and fees affecting the Guarantee Fund bank account after all payment has been made by the defaulting Depository Settlement Participant/s.
- 13.2. Given the case referred to above and the financial vulnerability of the concerned Depository Settlement Participants/s, CSDB shall immediately before start of day:
- 13.2.1. Inform BSEL of non-compliance by the defaulting Depository Settlement Participants/s.
  - 13.2.2. Disable the defaulting Depository Settlement Participants employees from logging into the CSD system and inform them of their suspension;
  - 13.2.3. Inform all Depository Settlement Participants through a written notice including information regarding:
    - 13.2.3.1.1. The amount of deficiency;
    - 13.2.3.1.2. Expenses and interest for activation of the Guarantee Fund;
    - 13.2.3.1.3. The amount of surcharge on the Depository Settlement Participants for non-compliance of the CSDB and BSEL Rules.
- 13.3. The CSDB shall order the defaulting Depository Settlement Participants/s to replenish the deficiency in the Guarantee Fund

bank account as well as pay all amounts due as per the notice, refer to Clause 13.2.3 above.

- 13.4. After receiving confirmation from the Guarantee Fund's correspondent bank that all amounts have been paid in full and credited in the bank account, CSDB shall reinstate the settlement and clearing services to the defaulting Depository Settlement Participants.
- 13.5. The CSD system login credentials for Depository Settlement Participants/s' employees shall be reinstated.
- 13.6. The concerned Depository Settlement Participant/s shall communicate in writing to CSDB to enable them access to the system.

## 14. REPLENISHMENT OF THE GUARANTEE FUND BY A DEFAULTING DEPOSITORY SETTLEMENT PARTICIPANT

- 14.1. A Depository Settlement Participant who fails to settle their net amount on settlement date (T+3) not later than 9:30 am, causing CSDB to settle its payment obligations to other Depository Settlement Participants from the Guarantee Fund bank account, shall be obliged to replenish the Guarantee Fund bank account with the value of the amount previously withdrawn plus interest accrued at the prevailing Prime Rate + 3% MoPR + 7.11 on T+5 not later than 9:30 am.
- 14.2. If the Depository Settlement Participant fails to pay on T+5, the CSDB shall instruct the Depository Settlement Participant to sell the purchased Securities through another broker on T+6.
- 14.3. If the Depository Settlement Participant fails to sell on T+6, The Guarantee Fund Committee shall sell the said Securities by way of auction.
- 14.4. The surplus if any, shall be paid to the Guarantee Fund after deduction of all charges and expenses due from the Depository Settlement Participant.

14.5. If the proceeds of the auction are not sufficient for the reimbursement of the required amount of the Guarantee Fund, the Depository Settlement Participant shall be obliged to pay the difference. Refer to the settlement timeline process.

## 15. REPLENISHMENT OF THE GUARANTEE FUND BY OTHER DEPOSITORY SETTLEMENT PARTICIPANTS

15.1. If by T+~~28~~ at 9:30 am the defaulting Depository Settlement Participants failed to pay the difference referred to in Clause 14.5 above, and ascertained the exhaustion of the Guarantee Fund amount, the Committee shall immediately request all Depository Settlement Participants to replenish the Guarantee Fund bank account.

15.2. The CSDB shall determine the amount of the individual Depository Settlement Participants to be paid in the Guarantee Fund bank account as follows;

Net Replenishment (remaining)/ Number of Participants (less number of failed participants).

15.3. Immediately after calculation, the CSDB shall send all Depository Settlement Participants a notice specifying the amount of payment and the method used to calculate the payment.

15.4. Depository Settlement Participants shall credit the Guarantee Fund by 9:30 am the next business day (T+10) after receipt of such notice.

15.5. Once the defaulting Depository Settlement Participant is able to pay the difference which is referred to in Clause 14.5, the other Depository Settlement Participants shall be refunded the amount contributed towards replenishment with interest.

## 16. DEPOSITORY SETTLEMENT PARTICIPANTS'S WITHDRAWAL FROM THE GUARANTEE FUND

16.1. In the event that a Depository Settlement Participants withdraws its participant status from CSDB pursuant to Sections 11.4(b), 11.5 and

~~Section 12~~ ~~Section 16.4~~ of the CSDB Rules and hence the Guarantee Fund, the current value of the Depository Settlement Participant's contribution will be remitted to them after all expenses and obligations related with the Guarantee Fund have been fully catered for.

16.2. A Depository Settlement Participant's Guarantee Fund deposit shall be paid to the Depository Settlement Participant, or his successor, where the Depository Settlement Participant ceases to be a depository member voluntarily, and the Depository Settlement Participant or his successor, has presented to CSDB such indemnities or guarantees as the CSDB deems satisfactory.

~~16.3 Subject to the strict supervision and control of the CSD Participant and on the written approval of the CSDB, the CSD Participant who terminates their participant status may be permitted to continue to carry out the following process on behalf of its clients from the date of such termination.~~

~~a) Notwithstanding the termination referred to herein, the CSD Participant in termination shall continue to honour his obligations with regard to fund settlement to other parties.~~

~~b) All sales proceeds received by a Participant subsequent to the termination shall be used to make payment to the respective sellers under the strict control and supervision of the CSDB, subject to the recovery of any outstanding dues from the sellers.~~

~~c) Account Holders who hold Securities with a CSD Participant in termination may transfer such Securities from such CSD Participant to any other CSD Participant of their choice. The Account Holders may do so only after the settlement of any outstanding encumbrances attached to the Securities.~~

~~16.4 The CSDB Rules shall in no way prevent the CSDB from taking punitive action against the outgoing CSD Participant in default.~~

## 17. EXECUTION OF TRANSACTIONS EXCEEDING THE GUARANTEE FUND BALANCE

In the event that the value of the transaction exceeds the balance in the Guarantee Fund bank account, the Depository Settlement Participants shall deposit 30% of the value of the transaction with the Correspondent Bank on T+2 at 1200hrs noon, with no late affirmation. ~~T+1 at 0930 am.~~ The amount will be locked in the account until settlement day. This will cater for compensation and other costs should the Depository Settlement Participants fail to settle the transaction.

## 18. APPLICATION OF THE GUARANTEE FUND

18.1. Every Depository Settlement Participant admitted by the CSDB to the Guarantee Fund shall abide by the following Rules, Procedures and Guidelines:

18.1.1. CSDB Clearing and Settlement Rules;

18.1.2. CSDB Operational Procedures;

18.1.3. Guarantee Fund Rules; and

18.1.4. Settlement Guarantee Fund Agreement.

## 19. LIQUIDATION OF THE GUARANTEE FUND

In the event that the Guarantee Fund is liquidated, the assets in the fund shall be disbursed to the Depository Settlement Participants and CSDB according to the proportions of their contributions.

## 20. DISPUTE RESOLUTION

Any dispute arising in terms of these Rules shall be resolved in accordance with the CSDB Rules as may be amended from time to time.



## 21. PENALTIES

- 21.1. Failure to settle money obligations on the due settlement day shall attract a penalty of ~~6%~~ 15% of the value of the failed trade as detailed in section of Failed Trades in the CSDB Rules.
- 21.2. The affected Depository Settlement Participants shall pay the penalty by close of next trading day.
- 21.3. Failure to comply with Clause 21.2 above shall attract an additional daily penalty fee of the prevailing MoPR + 7.11% prevailing Prime rate ~~+3%~~ on the value of the transaction.
- 21.4. In all cases, penalties collected from Depository Settlement Participants during clearing and settlement shall accrue to the Guarantee Fund.

## 22. GENERAL PROVISIONS

- 22.1. All expenses in connection with or incidental to the management of the Guarantee Fund including the cost of audit and legal expenses shall be borne by the Guarantee Fund.
- 22.2. The Rules of the Guarantee Fund may be amended and submitted to the CSDB Board of Directors and Non-Bank Financial Institutions Regulatory Authority for approval.