

BOTSWANA OPEN UNIVERSITY ACT, 2017

No. 13



of 2017

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An Act to provide for the continuation of Botswana College of Distance and Open Learning under the name of the Botswana Open University and to provide for its powers and functions and for the governance structures of the University and for matters connected or incidental thereto.

Date of Assent: 06.11.2017

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 Open University Act, 2017, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“Council” means the University Council established under section 10;

“Chairperson” means the Chairperson of the Council appointed under section 9;

“distance learning” means a mode of delivery of education to persons situated at a distance from the University, without such persons necessarily attending classes;

“member” means a member of the Council;

“regional centres” means designated places for providing support services to the students of the University;

Cap. 57:03

“repealed Act” means the Botswana College of Distance and Open Learning Act;

“Statutes” means the Statutes of the University enacted under section 32; and

“University” means the Botswana Open University.

PART II — *Establishment and functions of Botswana
Open University*

3. (1) The Botswana College of Distance and Open Learning established under section 3 of the repealed Act, is hereby continued under the new name of the Botswana Open University and shall continue to exist as if established under this Act.

Establishment
of University

(2) The University shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

4. (1) The primary function of the University shall be to provide quality education through open and distance learning.

Powers and
functions of
University

(2) Without prejudice to the generality of the provisions of subsection (1), the University shall —

- (a) provide tertiary education and professional training and open schooling;
- (b) provide in-service programmes to upgrade the skills of staff;
- (c) provide guidance and counselling services to students;
- (d) formulate and carry out the academic policy of the University;
- (e) devise and regulate courses of instruction and study;
- (f) advise the Minister on the requirements of admission of students;
- (g) prescribe disciplinary rules for the staff and students;
- (h) determine fees, commissions, charges and other payments for services and use of facilities of the University;
- (i) raise funds in such a manner as the University may deem fit;
- (j) receive and accept donations of money or property, on such terms and conditions as shall not be inconsistent with this Act and the functions of the University;
- (k) report on such matters as may be referred to it by the Vice-Chancellor; and
- (l) do all such things and perform all such functions as may be necessary for, or incidental to the functions of the University.

5. (1) The seal of the University shall be such device as may be determined by the Council and shall be kept by the Vice-Chancellor.

Seal of
University

(2) The affixing of the seal shall be authenticated by the Chairperson or Vice-Chairperson and the Vice-Chancellor or any other person authorised in that behalf by a resolution of the Council.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the University by the Vice-Chancellor or any other person generally or specifically authorised by the Council in that behalf.

PART III — *Governance of University*

Principal
officers of
University

6. The principal officers of the University shall be —

- (a) the Chancellor;
- (b) the Chairperson of the Council;
- (c) the Vice-Chairperson of the Council;
- (d) the Vice-Chancellor; and
- (e) such Deputy Vice-Chancellor as may be appointed under section 8 (3).

Chancellor

7. (1) The Chancellor of the University shall be the President of the Republic of Botswana or such eminent person as may be appointed by the President.

(2) The Chancellor shall hold office for a period of five years, and shall be eligible for re-appointment for a further term of five years.

(3) The Chancellor shall have such powers and privileges and perform such functions as may be conferred on him or her by the Statutes.

(4) The Chancellor shall be the titular head of the University and shall be its ambassador, promoting goodwill and mobilising resources for the University.

(5) The Chancellor shall preside over ceremonial assemblies, confer awards of the University and perform and exercise other functions and powers as described in the Act and in the Statutes.

(6) In the absence of the Chancellor or during the vacancy in the office of the Chancellor, the Chairperson shall act as the Chancellor.

Vice-Chancellor

8. (1) The Vice-Chancellor shall be appointed by the Minister after consultation with the Council and the Senate on such terms and conditions as may be provided for in the Statutes.

(2) The Vice-Chancellor shall be the Chief Executive Officer of the University and, under the Council, shall be the Academic and Administrative Head and the Chief Disciplinary Officer of the University.

(3) The Council shall, after consultation with the Senate, appoint such number of Deputy Vice-Chancellors as the Council may, in accordance with Statutes determine from time to time.

(4) When the post of Vice-Chancellor is vacant, or when the Vice-Chancellor is absent, or for any reason unable to perform the functions of Vice-Chancellor, there shall be appointed in accordance with the Statutes, one of the Deputy Vice-Chancellors to act as Vice-Chancellor, or if no Deputy Vice-Chancellor is available, any other suitable member of the University staff may be appointed to act as Vice-Chancellor.

(5) The Vice-Chancellor and the Deputy Vice-Chancellors shall constitute an Executive Management Team to provide executive leadership to the University.

Chairperson
and
Vice-Chairperson
of Council

9. (1) Subject to subsection (2), the Chairperson shall be appointed by the President.

(2) Where the Chancellor is not the President, the Chairperson shall be appointed by the President on the recommendation of the Chancellor made after consultation with the Council.

(3) The Vice-Chairperson of the Council shall be elected at the first meeting of the Council from amongst the members that are not employees or students of the University.

(4) The Chairperson shall perform such functions as may be conferred on him or her by the Statutes.

(5) The Vice-Chairperson of the Council shall act as Chairperson in the absence of the Chairperson.

10. (1) There shall be a Council, which shall be the governing body of the University.

University
Council

(2) The Council shall consist of the following members —

(a) the Vice-Chancellor;

(b) a Deputy Vice-Chancellor appointed by the Council;

(c) three persons who are public officers, appointed by the Minister;

(d) four persons nominated by Chancellor —

(i) one of whom shall be representative of civil society, and

(ii) three of whom shall be representative of the private sector;

(e) one person who is not a resident of Botswana, appointed by the Minister by reason of his or her special knowledge and competence in tertiary education or distance and open learning;

(f) one former graduate of the University who is not member of staff, nominated by former students of the University;

(g) two members of Senate, nominated by Senate, one of whom shall be a professor and one a Dean of a faculty of the University;

(h) one member of academic staff who is not on the Senate, nominated by members of the academic staff; and

(i) one member of the support staff nominated by the support staff of the University.

(3) The procedure for nomination of members under section 2 (f), (g), (h), and (i) shall be as specified in the Statutes.

(4) A member shall hold office for a period not exceeding three years as may be specified in the notification of appointment, and shall be eligible for re-appointment for two further terms.

10A. The Minister may give the Council directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the contractual or other obligations of the Council, and the Council shall give effect to any such directions.

Directions by
Minister

11. (1) The Council shall, subject to the provisions of this Act and Statutes, be responsible for the general control over the University and its affairs, purposes and functions and all such other powers and duties as may be conferred upon it by the Statutes.

Functions of
Council

(2) Without prejudice to the generality of the provisions of subsection (1), the Council shall —

(a) set the strategic direction of the University by overseeing the development and adoption of the mission and strategic plans of the University;

Powers of
Council

- (b) approve policies, capital plans and the annual planning and budget report;
- (c) monitor and review the overall performance of the University in relation to plans, policies, values, academic standards, financial management and buildings and estates management;
- (d) approve the annual report and annual statement of accounts of the University;
- (e) ensure the strategic leadership of the University;
- (f) enhance the engagement between the University and the community;
- (g) approve the institutional plan of the University; and
- (h) maintain, through Senate, high levels of academic standards.

12. (1) The Council shall, subject to the provisions of this Act and Statutes, have the power to do or provide for any act or thing which it considers necessary or expedient for the performance of its powers and functions.

(2) Without prejudice to the generality of the provisions of subsection (1), the Council shall —

- (a) determine persons who are authorised to sign contracts, cheques and other documents on behalf of the University, and otherwise regulate procedure in relation to transactions entered into by the University;
- (b) provide for the safe custody and proper use of the seal of the University; and
- (c) approve terms and conditions of service for employees of the University.

(3) The Council may, where it deems necessary or desirable, prohibit the admission of a person as a student of the University.

(4) The Council shall exercise the powers under subsection (3) notwithstanding the disciplinary powers conferred on the Vice-Chancellor.

(5) Without prejudice to the powers conferred on any other person under any other law, the Council shall have the power, after consultation with the Minister and Senate, to declare the University closed for purposes of offering some or all academic programmes and courses and whenever possible indicate the period which the University shall remain closed.

(6) Notwithstanding subsection (5), the Chairperson shall, where there is an emergency, have the power to act on behalf of the Council and order the University closed.

Disqualification,
suspension,
removal and
resignation
from office

13. (1) A person shall not be appointed or nominated as a member or be qualified to continue to hold office where he or she has —

- (a) in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside; or

(b) within the period of six years immediately preceding the date of his or her proposed appointment, been convicted —

- (i) in Botswana of a criminal offence, or
- (ii) outside Botswana, of an offence which, if committed in Botswana would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without an option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

(2) The Council may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without an option of a fine may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties under this Act or be entitled to any remuneration or allowances as a member.

(3) The Council may remove a member from office, after consultation with the appointing authority if the member —

- (a) is absent without reasonable cause from three consecutive meetings of the Council of which he or she has had notice;
- (b) has been found to be physically or mentally unable to perform his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (c) contravenes the provisions of this Act, the Statutes or other instruments stipulating the duties and responsibilities of members or otherwise misconducts himself or herself to the detriment of the objectives of the Council;
- (d) has been convicted of an offence for which he or she is sentenced to imprisonment for a term of six months or more; or
- (e) has failed to comply with the provisions of section 16.

(4) A member may resign from office by giving three months' notice in writing to the Council.

14. (1) The office of a member shall become vacant —

- (a) if he or she becomes disqualified in terms of section 13 to hold office as a member;
- (b) upon his or her death;
- (c) after a period of 30 days from the date a ruling is made against a member on appeal, where a member appeals a conviction;
- (d) after a period of 30 days has elapsed from the date the member is given notice, in writing, by the Council of his or her removal from office; or
- (e) where a member is summarily dismissed by the Council on the grounds of contravening the provisions of this Act or Statutes or for misconduct detrimental to the objectives of the Council.

(2) Where the office of a member becomes vacant before the expiry of a member's term of office, the vacancy shall be filled in the same way as the original appointment or nomination, and any person so appointed or nominated shall hold office for a full term.

Vacation of
office and filling
of vacancies

Meetings of
Council

15. (1) Subject to the provisions of this Act and the Statutes, the Council may regulate its own proceedings.

(2) The Council shall meet for the transaction of business at least three times in a year.

(3) The Chairperson may, upon giving written notice of not less than 14 days, and upon a written request of not less than one half of the members, call a meeting of the Council.

(4) If the urgency of any particular matter does not permit the giving of such notice referred to in subsection (3), a special meeting of the Council may be called upon giving a shorter notice period.

(5) There shall preside at any meeting of the Council —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of the Chairperson and Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) The quorum at any meeting shall be one half of the members.

(7) All questions before the Council shall be decided by the majority of votes of the members present at the meeting at which the relevant question is considered, and in the event of an equal number of votes being cast, the Chairperson, or the person presiding at that meeting, shall have a casting vote in addition to that person's deliberative vote.

(8) The Council may invite any person whose presence it deems necessary, to attend and participate in the deliberations of a meeting of the Council, but such person shall have no vote.

Disclosure of
interest

16. (1) If a member is present at a meeting of the Council or any committee of the Council at which any matter is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, he or she shall as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) The provisions of subsection (1) shall with necessary modifications apply to a person co-opted in terms of section 15 (8).

(3) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(4) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding six months, or to both.

Confidentiality

17. (1) A member shall observe and preserve the confidentiality of all matters coming before the Council and such confidentiality shall subsist even after the termination of their terms of office or mandates.

(2) Any person to whom confidential information is revealed through working with the Council shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding six months, or to both.

18. (1) The Council may appoint committees consisting of its members or of other suitably qualified persons.

Committees of
Council

(2) The Council may delegate any of its powers, functions or duties under this Act to a committee appointed under subsection (1).

19. A member or a person co-opted in terms of section 15 (8) may be paid remuneration and allowances, if any, as the Minister may from time to time determine.

Remuneration
and allowances

20. (1) There shall be a Secretary to the Council who shall be appointed by the Council.

Secretary of
Council

(2) The Secretary of the Council shall attend all meetings of the Council and Committees of the Council but shall have no right to vote, and shall be responsible for the recording of proceedings and decisions of the meetings.

21. (1) There shall be a Senate of the University which, subject to the provisions of this Act, the Statutes and the general control and approval of the Council, shall be responsible for the academic work of the University, both in teaching and in research, and the superintendence of the education and discipline of the students of the University.

Senate

(2) Without prejudice to the generality of the provisions of subsection (1), the Senate shall be responsible for —

- (a) formulating and carrying out the academic policy of the University;
- (b) directing and regulating courses of instruction and study, and standards for supervising research;
- (c) regulating the conduct of examinations and appointing, suspending and removing internal and external examiners;
- (d) regulating and authorising the awards of degrees, diplomas and certificates;
- (e) regulating the admission of students and the award of scholarships; and
- (f) reporting on such matters as may be referred to it by the Council and taking such action as the Council may authorise.

(3) The Senate may make representations to the Council on any matter connected with the University, and shall have such additional functions as may be conferred on the Senate by the Statutes.

(4) The Senate shall establish committees of its members, and may appoint, as additional members of such committees, persons who are not members of the Senate, and may delegate to any such committee, any powers and functions which it is itself competent to perform.

(5) The Senate shall consist of the Vice-Chancellor and such other members as shall be specified in the Statutes.

PART IV — *Academic Staff and Employees*

Appointment
and conditions
of service

22. (1) The Council shall appoint the full time staff of the University and the Vice-Chancellor shall, with the approval of the Council, appoint such other staff as may be necessary for the proper discharge of the functions of the University.

(2) The terms and conditions of employment of staff of the University shall be as may be determined by the Council, in consultation with the Minister.

(3) The Council may, with the consent of the Minister, second a member of staff to an organisation on such terms as shall be specified by the Council.

(4) The University may be assisted in the discharge of its functions, by a member of staff seconded from Government or from any other organisation.

Academic
qualifications
of academic
staff

23. The University shall employ suitably qualified academic staff who shall hold such qualifications as the University may determine.

PART V — *Programmes and Students of University*

Programmes
and courses of
University

24. (1) The University shall offer such academic, professional, vocational and technical education as may be determined by the Council.

(2) The University may offer programmes and courses in collaboration with other institutions or organisations nationally or internationally.

(3) The University shall use such distance and open learning methods as it may determine to deliver its programmes and courses.

Teaching
methods

25. (1) The University shall engage qualified academic staff on full time or part time basis to teach, tutor and guide the students of the University.

(2) The University shall protect teaching materials produced by the University or by any person employed by the University for such purpose, in accordance with the Copyright and Neighbouring Rights Act.

Cap. 68:02

(3) The University shall use regional centres and other existing national facilities as venues for learning, tests, examinations and other meetings that may be required between the students and the University.

Medium of
instruction

26. (1) Subject to subsection (2), the medium of instruction at the University shall be the official languages.

(2) Where it is deemed necessary in specified courses or subjects, the medium of instruction shall be in any other language.

Qualification
for admission

27. Qualification for admission at the University shall be as may be determined by the University in its Statutes.

PART VI — *Financial Provisions*

28. (1) The revenues of the University shall consist of —

Revenues of
University

- (a) moneys appropriated by the National Assembly for the purposes of the University;
- (b) fees that the University may charge for services it may render;
- (c) grants and donations that the University may receive; and
- (d) income that the University may receive from rentals or sale of educational materials, land or buildings.

(2) The University shall use the revenues acquired under subsection (1) to meet the costs incurred in its operations and shall use any surplus accrued for such purposes as it may determine, with the approval of the Minister.

29. The financial year of the University shall be a period of 12 months ending on the 31st of March.

Financial year

30. (1) The University shall keep and maintain proper accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the University, and shall prepare, in each financial year, a statement of such account.

Accounts and
audit

(2) The accounts of the University in respect of each financial year shall, within three months of the end thereof, be audited by an auditor appointed by the Council.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems it pertinent to comment on, whether or not —

- (a) the auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the University have been properly kept;
- (c) the University has complied with all the financial provisions of this Act with which it is the duty of the University to comply; and
- (d) the statement of accounts prepared by the University was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the University.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion thereof, be forwarded to the University by the auditor.

31. (1) The Council shall within a period of six months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on the operations of the University during such year, together with the auditors' report and the audited accounts as provided for in section 30.

Annual report

(2) A report compiled in accordance with subsection (1) shall be laid in Parliament by the Minister within three months of receipt thereof.

PART VII — *Miscellaneous Provisions*

Statutes

32. The Council may enact statutes for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing, may make provision for —

- (a) regulating the appointment, conditions of service, termination of appointment and retirement benefits of the staff of the University;
- (b) determining the persons authorised to sign contracts, cheques and other documents on behalf of the University, and otherwise regulate procedure in relation to transactions entered into by the University; and
- (c) determining the academic year of the University.

Indemnity

33. No matter or thing done or omitted by a member of the Council or a member of staff of the University shall, if the matter or thing is done *bona fide* in the course of the operations of the Council or the University, render a member or staff personally liable to an action, claim or demand.

Regulations

34. (1) The Minister may, following consultation with the Council, make Regulations prescribing anything under this Act which is to be prescribed or which, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), Regulations may provide for —

- (a) the formulation and modulations of courses of instruction;
- (b) regulating the conduct of examinations and awards of certificate; and
- (c) determining fees, commissions, charges and other payments for services and use of facilities of the University.

Repeal of
Cap. 57:03

35. The Botswana College of Distance and Open Learning Act is hereby repealed.

Savings and
transitional
provisions

36. (1) Any act lawfully performed by the Botswana College of Distance and Open Learning under the repealed Act and before the commencement of this Act shall continue to be valid as if performed under this Act.

(2) All Statutes, rules and ordinances made under the repealed Act and in force immediately prior to the coming into operation of this Act shall, to the extent consistent with this Act, continue to be in force as if made under this Act.

(3) Subject to the provisions of this Act, all property which is vested in the Botswana College of Distance and Open Learning or was in any manner held on behalf of, or for purposes of the Botswana College of Distance and Open Learning, shall similarly vest in or be held on behalf of, or for the purposes of the University.

(4) Every contract entered into by the Board of the Botswana College of Distance and Open Learning shall have effect as if entered into by the University, and all obligations subsisting against the Botswana College of Distance and Open Learning shall continue to subsist against the University.

(5) Any legal proceedings pending immediately before the commencement of this Act, to which the Botswana College of Distance and Open Learning was a party shall be continued as if the University has been a party thereto instead of the Botswana College of Distance and Open Learning.

(6) Any enquiry or proceedings, whether of a disciplinary nature or otherwise, instituted or pending in respect of any employee of the Botswana College of Distance and Open Learning before the commencement of this Act shall be dealt with, inquired into and determined in accordance with the procedures in place before the commencement of this Act concerning such enquiries or proceedings.

(7) The administrative and management structures of the Botswana College of Distance and Open Learning in existence under the repealed Act immediately before the commencement of this Act shall, to the extent that their continued existence is not inconsistent with this Act, continue in existence.

(8) All staff of the Botswana College of Distance and Open Learning shall become the corresponding staff of the University and shall continue in office for the period which, and subject to the conditions which, they were appointed, as staff of the Botswana College of Distance and Open Learning.

(9) The Board under the repealed Act shall operate as a transitional board pending the constitution of the Council in terms of this Act.

(10) The Minister may, by Order published in the *Gazette*, make such transitional arrangements as may be necessary for the implementation of this Act.

PASSED by the National Assembly this 20th day of July, 2017.

BARBARA N. DITHAPO,
Clerk of the National Assembly.