

INTERPRETATION AND GENERAL PROVISIONS ACT, 1973

No. 39



of 1973

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An Act to make provision with regard to the construction, application and interpretation of written laws, to make certain general provisions with regard to such laws and other like purposes

Date of Assent: 20.12.73

Date of Commencement: 28.12.73.

ENACTED by the Parliament of Botswana.

PART I. *Preliminary*

1. This Act may be cited as the Interpretation and General Provisions Act, 1973. Short title

2. The provisions of this Act shall apply to every written law (including this Act) and every public document, whether or not such written law or public document was enacted, passed, made or issued before or after the commencement of this Act, unless otherwise provided therein, or unless there is something in the subject or context inconsistent with such construction or interpretation. Application

3. (1) The following words and expressions shall have the meanings hereby assigned to them respectively, that is to say – Inter-pretation of words and expressions

“Act” means an Act of the Parliament of Botswana or any written law, however entitled, and whether enacted within or without Botswana, having the force and effect of an Act of the Parliament of Botswana;

“this Act” includes any subsidiary legislation made and in force under the Act in which the expression occurs;

“act” used with reference to an offence or civil wrong includes an omission and extends to a series of acts and omissions;

“action” means any civil proceedings in a court;

- “administrative officer” means a District Commissioner, a Senior District Officer, a District Officer or a District Assistant;
- “advocate” means a person duly admitted to practise as an advocate in Botswana in accordance with any written law relating to the admission of advocates in Botswana;
- “aircraft” includes seaplanes, flying boats, airships and aerial balloons;
- “amend” includes repeal, revoke, cancel, delete and replace, in whole or in part, add to, vary, and the doing of any two or more of such things simultaneously, or in the same written law;
- “applied Act” means any legislation not enacted by the legislature of Botswana but which has force and effect as an Act of the Parliament of Botswana;
- “Assistant Minister” means an Assistant Minister of the Government appointed in accordance with the Constitution;
- “attorney” means a person duly admitted to practise as an attorney in Botswana in accordance with any written law relating to the admission of attorneys in Botswana;
- “Attorney-General” means the Attorney-General of Botswana appointed in accordance with the Constitution;
- “Auditor-General” means the Auditor-General for Botswana appointed in accordance with the Constitution;
- “Botswana” means the territory comprising the sovereign Republic of Botswana, or in relation to any occurrence, matter or thing prior to the 30th September, 1966, means the territory comprising the Bechuanaland Protectorate;
- “Cabinet” means the Cabinet established by or under the Constitution;
- “Chief” means a Chief of one of the tribes and includes the regent thereof, and any person appointed as “tribal authority” in accordance with any written law relating to chieftainship;
- “Chief Justice” means the Chief Justice of Botswana appointed in accordance with the Constitution;
- “Christian name” means any name prefixed to the surname whether received in Christian baptism or not;
- “coin” means any coin legally current in Botswana;
- “commencement” used with reference to any written law means the date on which the same came or comes into operation;
- “commissioner of oaths” means a person appointed as such by or under the Commissioners of Oaths Proclamation;
- “the Commonwealth” has the same meaning as in the Constitution;

- “Commonwealth citizen” has the same meaning as in section 28 of the Constitution;
- “Commonwealth country” means any country specified in section 28(3) of the Constitution or prescribed by Parliament under the provisions of that section, and any dependency of such country;
- “Consolidated Fund” means the Consolidated Fund established under the Constitution;
- “Constitution” means the Constitution of Botswana as by law established;
- “consular officer” includes a consul-general, consul, vice-consul, pro-consul, consular agent, or any person for the time being authorized to discharge the duties of consul-general, consul, vice-consul, pro-consul or consular agent;
- “contravene” in relation to any requirement or condition prescribed in any written law or in any grant, permit, lease, licence or other authority under or by virtue of any written law, includes a failure to comply with that requirement or condition;
- “court” means any court of competent jurisdiction for Botswana;
- “Court of Appeal” means the Court of Appeal for Botswana established under the Court of Appeal Act, 1972; 44 of 1972
- “Crown Agents” means the persons or body for the time being acting as Crown Agents for Oversea Governments and Administrations;
- “customary court” means a customary court recognized or established under the Customary Courts Proclamation, 1961; 19 of 1961
- “definition” means the interpretation given by any written law to any word or expression;
- “Department” means a Department of the Government;
- “district” means any one of the administrative districts into which Botswana is divided by the President in exercise of powers conferred on him in that behalf by any written law;
- “District Commissioner” in relation to any district means the administrative officer designated by the Permanent Secretary to be the District Commissioner of that district, or, in the absence of such officer from his headquarters, the most senior administrative officer actually present at such headquarters;
- “district council” means a district council established and constituted under the Local Government (District Councils) Law, 1965; 33 of 1965
- “District Officer” and “Senior District Officer” mean the administrative officers respectively holding the public offices of those names, and “District Officer” used without qualification includes a Senior District Officer;

- “document” includes any publication and any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter;
- “export” means to take or cause to be taken out of Botswana by any means whatsoever;
- “financial year” or “fiscal year”, in connexion with any matters relating to the Consolidated Fund or money provided by Parliament or to public finance, means any period of twelve months ending on the 31st March;
- “functions” includes powers and duties;
- “Gazette” means the Botswana Government Gazette and includes any Government Gazette Extraordinary, any supplement to the Gazette and any matter referred to in the Gazette as being published with the Gazette;
- “Government” means the Government of Botswana;
- “Government Notice” (or its abbreviated form “G.N.”) means any notice published as such in the Gazette;
- “Government Printer” means the Government Printer of Botswana and any other printer authorized by or on behalf of the Government to print any written law or any other document of the Government;
- “herein” used in any provision of a written law shall be understood to relate to the whole written law and not to that provision only;
- “High Court” means the High Court of Botswana established by or under the Constitution;
- “House of Chiefs” means the House of Chiefs for Botswana established by or under the Constitution;
- “immovable property” means land, whether covered by water or not, and includes any estate, right, interest, servitude or easement in or over any land, and things attached to land or permanently fastened to anything attached to land;
- “import” means to bring or cause to be brought into Botswana by any means whatsoever;
- “judge” means judge of the High Court;
- “Justice of Appeal” means a Judge of the Court of Appeal;
- “land” includes water;
- “legal practitioner” means a person duly admitted to practise as an advocate, attorney, notary or conveyancer in Botswana in accordance with the Legal Practitioners’ Act, 1967;
- “local authority” means a town council, a township authority or a district council;

- “magistrate” means a person empowered to preside over a subordinate court;
- “medical practitioner” means a medical practitioner duly registered as such under the Medical, Dental and Pharmacy Proclamation; Cap. 147
- “Minister” means a Minister of the Government and includes the President and the Vice-President;
- “the Minister” means the Minister for the time being responsible for the matter in question;
- “month” means a calendar month;
- “movable property” means any property other than immovable property;
- “National Assembly” means the National Assembly of Botswana established by or under the Constitution;
- “oath”, “swear” or “affidavit” includes and applies to the affirmation or declaration of any person allowed by any written law to make an affirmation or declaration in lieu of an oath;
- “occupy” includes use, inhabit, be in possession of or enjoy the premises in respect whereof the word is used, otherwise than as a mere servant or for the purpose of the care, custody or charge thereof;
- “offence” means any contravention of, breach of, or failure to comply with any written law for which a penalty is provided;
- “Parliament” means the Parliament of Botswana established by or under the Constitution;
- “Permanent Secretary” means the holder of the public office of that designation responsible, subject to the directions and control of the Minister, for the supervision of a Department, and includes the Secretary to the Cabinet, the Secretary for External Affairs and the Administrative Secretary in the Office of the President;
- “the Permanent Secretary” means the Permanent Secretary of the Department responsible for the matter in question;
- “person” or any word or expression descriptive of a person includes any public body, company or association or any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word “person” or the word or expression descriptive of a person occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation;
- “police officer” means any member of the Botswana Police Force constituted under the Police Act, 1972; 42 of 1972
- “power” includes any privilege, authority or discretion;
- “prescribed” means prescribed by or under the written law in which the word occurs;

“President” means the President of the Republic of Botswana;

“property” includes money and every description of property, whether movable or immovable, animate or inanimate; and also obligations and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property;

“public” includes any class of the public;

“publication” includes all written and printed matter, and any record, tape, wire, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically or electrically produced, reproduced, represented or conveyed, and everything, whether of a nature similar to the foregoing or not, containing any visible representation, or by its form, shape or in any manner capable of producing, reproducing, representing or conveying words or ideas, and every copy and reproduction of any publication;

“public holiday” means any day which is a public holiday by virtue of the Public Holidays Proclamation;

“public office”, “public officer” and “public service” have the same meanings as in the Constitution;

“public place” or “public premises” includes any public way, and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access, either without any condition or upon condition of making payment, and any building, place or conveyance which is for the time being used for any public or religious meeting or assembly or as an open court;

“Public Seal” means the Public Seal of the Republic of Botswana;

“registered” used with reference to a document or the title to any property means registered in accordance with the provisions of any written law for the time being applicable to such registration;

“repeal” includes rescind, revoke, cancel, delete or replace;

“Republic” means the Republic of Botswana;

“road” or “street” includes any highway, street, road, bridge, square, court, alley, lane, footway, bridle-path, parade, thoroughfare, passage or open space to which the public are entitled or permitted to have access, whether on payment or otherwise;

“rule” includes rule of court, bye-law or regulation;

“rule of court”, when used in relation to any court, means a rule or order made by the authority empowered to make rules or orders regulating the practice and procedure of such court;

“sell” includes barter, exchange, offer to sell or expose for sale;

“sign” or “signature” with reference to a person who is unable to write his name, includes mark or thumbprint;

“statutory declaration”, if made –

(a) in Botswana, means a declaration made under section 5 of the Justices of the Peace Proclamation or under section 4 of the Commissioners of Oaths Proclamation; or

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(b) in any other country means a declaration made before a member of the Diplomatic Branch of the Botswana Foreign Service attached to a Botswana Embassy or High Commission in such country, or a declaration made –

(i) in the Commonwealth elsewhere than in Botswana, before a justice of the peace, notary public, commissioner for oaths or other person having authority therein under any written law for the time being in force to take or receive a declaration; or

(ii) in any other place, before a British consul or vice-consul, or before any person having authority under any Act of Parliament of the United Kingdom for the time being in force to take or receive a declaration;

“Statutory Instrument” (or its abbreviated form “S.I.”) means any subsidiary legislation published as a statutory instrument in the Gazette;

“subordinate court” means any court subordinate to the High Court, established under the Subordinate Courts Proclamation;

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“subsidiary legislation” means any proclamation, regulation, rule, rule of court, order, notice, bye-law or other instrument made under or by virtue of any written law and having legislative effect;

“town council” means a town council established and constituted under the Townships Proclamation;

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“township” means any area declared to be a township under the Townships Proclamation;

“township authority” means a township authority established and constituted under the Townships Proclamation;

“traditional authority” means a Chief, deputy chief, sub-chief, Chief’s representative or headman appointed or recognized as such in accordance with the Chieftainship Law, 1965;

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“tribe” means the Bamangwato Tribe, the Batawana Tribe, the Bakgatla Tribe, the Bakwena Tribe, the Bangwaketse Tribe, the Bamalete Tribe, the Barolong Tribe, or the Batlokwa Tribe;

“vessel” includes any ship, boat or other floating craft used for transport by water;

“Vice-President” means the Vice-President of the Republic of Botswana;

“will” includes a codicil and every writing making a valid voluntary, posthumous disposition of property;
“word” includes abbreviations, figures, punctuation marks, parentheses and typographical, monetary and mathematical symbols;
“writing” and expressions referring to writing include printing, photography, lithography, typewriting and any other modes of representing or reproducing words in visible form;
“written law” includes the Constitution, Acts, applied Acts, and subsidiary legislation;
“year” means a calendar year.

(2) Words and expressions importing the masculine gender include females and corporations, and words and expressions importing the feminine gender include males and corporations.

(3) Words and expressions in the singular include the plural and words and expressions in the plural include the singular.

(4) Where the interpretation of any word or expression is defined, such definition shall extend, with the necessary modifications, to the interpretation of the grammatical variations of such word or expression and to cognate expressions.

(5) Where the words “or”, “other” and “otherwise” are used they shall be construed disjunctively and not as implying similarity, unless the word “similar” or some other word of like meaning is added.

Service of documents

4. (1) Where any document is required to be served by post, the service shall be deemed to be effected by properly addressing, prepaying and posting, by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post.

(2) Where a document is required to be served on any person without directing it to be served in a particular manner, the service of that document may be effected either –

- (a) by personal service;
- (b) by post;
- (c) by leaving it for him with some person apparently over the age of sixteen years at his usual or last-known place of abode or business;
- (d) in the case of a corporate body, or an association of persons, whether incorporated or not, by delivering it to the chairman, a director, the secretary or clerk of the body or association at the registered or principal office of the body or association, or by serving it by post on such chairman, director, secretary or clerk at such office; or

- (e) if it is not practicable, after reasonable enquiry, to discover the name or address of an owner, lessee or occupier of premises on whom the document should be served, by addressing the document to him by the description of owner or lessee or occupier of the premises (naming them) to which the document refers and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

PART II. *General Provisions Regarding Written Laws*

5. Every Act enacted by Parliament shall be a public Act and shall be judicially noted as such.

Acts to be
judicially
noted
Sections and
Schedules, etc

6. (1) Every Act shall be divided into sections if there be more enactments than one, and such sections shall be deemed to be substantive enactments without any introductory words.

(2) Every Schedule to or table in any written law shall, together with any notes thereto, be construed and have effect as part of such written law.

(3) Where a written law is divided into Chapters, Parts, Divisions, sections or other subdivisions, the fact and particulars of such Chapters, Parts, Divisions, sections or other subdivisions shall, with or without express mention thereof in such written law, be taken notice of in all courts and for all purposes whatsoever.

7. (1) Where any written law is referred to it shall be sufficient for all purposes to cite such written law by -

Citation of
written laws

(a) the long title or the short title or the citation thereof by which it was made citable;

(b) in the case of an Act, the year in which it was enacted and its number among the Acts of that year, or by any Chapter number given it under the authority of any written law providing for the issue of a revised edition of the Laws of Botswana; or

(c) in the case of subsidiary legislation, the year in which it was made and the number of the Statutory Instrument or Government Notice in which it was published in the Gazette, or where the subsidiary legislation is included in a revised edition of the Laws of Botswana, by the Chapter number of the Act under which it was made and the number of the page on which it first appears in such edition.

(2) Any reference made to a written law in accordance with the provisions of subsection (1) may be made according to the long title, short title, citation, number or Chapter number used in copies of such written law printed by the Government Printer.

(3) Any such citation of or reference to a written law shall be construed as a citation of or reference to such written law as amended from time to time by any other written law.

Time when
Act comes
into operation

8. (1) A Bill shall become an Act on being assented to and signed by the President.

(2) Subject to subsections (3) and (4) an Act assented to by the President shall come into operation immediately on the expiration of the day next preceding the day on which it is published in the Gazette.

(3) Where it is enacted in an Act, or in any other written law that such Act, or any provision thereof, shall come or be deemed to have come into operation on some specified day, the Act or, as the case may be, such provision shall come or be deemed to have come into operation immediately on the expiration of the day next preceding such day.

(4) Where it is enacted in an Act that such Act shall come into operation on such date as may be appointed by any person, such person may, by notice or order published in the Gazette, bring the Act into operation on a day specified in the notice or order, or may by the same or different notices or orders bring different provisions of the Act into operation on different dates.

(5) The date appearing on the copy of a written law printed by the Government Printer and purporting to be the date on which the written law commenced or was deemed to have commenced shall be accepted by all courts and for all purposes as evidence that such date was the date of such commencement, unless the contrary be proved.

Construction
of references
to section,
etc.

9. (1) Where in any Act there is a reference to a Chapter, Part, Division, section or Schedule by number or letter only and not in conjunction with the title or short title of any other Act, such reference shall be construed as a reference to the Chapter, Part, Division, section or Schedule of that number or letter contained in the Act in which such reference occurs.

(2) Where in any section of an Act there is a reference to a subsection, paragraph, subparagraph or other division by number or letter only, and not in conjunction with the number of any section of that or any other Act, such reference shall be construed as a reference to the subsection, paragraph, subparagraph or other division of that number or letter contained in the section in which such reference occurs.

(3) The provisions of subsections (1) and (2) shall apply *mutatis mutandis* to subsidiary legislation.

(4) Any reference to a written law in any written law shall include a reference to any subsidiary legislation made under the written law to which reference is made.

10. (1) Every written law shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the legislator to the intent that where any enactment thereof would, but for this provision, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

General principles of interpretation

(2) Every written law shall apply to the whole of Botswana unless it is otherwise expressed therein.

(3) A written law shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the objects of the written law according to its true intent, meaning and spirit.

(4) A marginal note to any provision of a written law shall not have any legislative effect and shall not in any way vary, limit or extend the interpretation of any written law.

(5) Any reference to a written law shall be deemed to include a reference to such written law as the same may from time to time be amended, and any reference to a provision in a written law shall be construed as a reference to such provision as it may from time to time be amended.

(6) Definitions or rules of interpretation contained in any written law shall apply to the construction of the provisions of the written law that contain those definitions or rules of interpretation as well as to the other provisions of the written law.

(7) Where a written law contains an interpretation provision, it shall be read and construed –

(a) as being applicable only if the contrary intention does not appear; and

(b) as being applicable to all other written laws relating to the same subject matter, unless the contrary intention appears.

11. An Act of the Parliament of the United Kingdom having effect as part of the law of Botswana may be cited by its short title or citation, if any, or by reference to the regnal or calendar year in which it was passed and by its chapter or number.

Citation of applied Acts

12. Where one written law amends another written law, the amending written law shall, so far as it is consistent with the tenor thereof, be construed as one with the amended written law.

Construction of amending written law with amended written law

13. Where any written law repealing in whole or in part any former written law is itself repealed, such last repeal shall not revive the written law or provisions before repealed unless words are added reviving such written law or provisions.

Repealed written law not revivable except by express provision

Repeal of amended written law to include amendment

14. Where any written law which has been amended by any other written law is itself repealed, such repeal shall include the repeal of all those provisions of other written laws by which such first-mentioned written law has been amended.

Continuation of certain written laws

15. Where any written law repeals in whole or in part any former written law and substitutes provisions for the written law or part thereof repealed, the repealed written law or part thereof shall remain in force until the substituted written law or provisions come into operation.

Provisions relating to repeals

16. (1) Where a written law repeals in whole or in part any other written law the repeal shall not –

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed;
- (c) affect any right, privilege or liability acquired, accrued or incurred under any written law so repealed;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any written law so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been enacted or made.

(2) Where a written law repeals and re-enacts, with or without modification, any of the provisions of any other written law –

- (a) any proceedings commenced under any provision so repealed shall be continued under and in conformity with the provision so repealed;
- (b) in the recovery or enforcement of any penalty or forfeiture incurred, and in the enforcement of any right existing under any provision so repealed or in any other proceedings in relation to matters which have happened before the repeal, the provision so repealed shall continue to apply;
- (c) any reference to any provision so repealed or to any person, authority or matter mentioned in any provision so repealed shall be read and construed as a reference to the provision, person, authority or matter respectively substituted therefor;
- (d) any officer or person whose appointment under any provision so repealed was subsisting immediately before such repeal

shall continue to hold office under the provision substituted until another officer or person is appointed in his stead;

- (e) any bond or security given by a person appointed under the provision so repealed shall remain in force, and all books, papers, forms and things made or used under such provision shall continue to be used as before the repeal so far as they are consistent with the provision substituted; and
- (f) any subsidiary legislation made under any repealed provision shall remain in force, so far as it is capable of being made under the repealing written law and is not inconsistent therewith, until it has been repealed or revoked by any other written law, and shall be deemed for all purposes to be subsidiary legislation made under such repealing written law.

17. (1) The repeal of a written law in whole or in part shall not be deemed to be or to involve a declaration that such written law was or was considered by Parliament or other body or person by whom it was enacted or made to have been previously in force.

Implications of repeal, amendment, revision or consolidation

(2) The amendment of a written law shall not be deemed to be or to involve a declaration that the law under such written law was or was considered by Parliament or other body or person by whom such written law was enacted or made to have been different from the law as it is under the written law as amended.

(3) The repeal or amendment of a written law in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.

(4) A re-enactment, amendment, revision or consolidation of a written law shall not be deemed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the written law or upon similar language.

18. Upon the expiry or lapse of any written law the provisions of section 16(1) shall apply as if such written law had been repealed.

Effect of expiry of written law

PART III. *Subsidiary Legislation*

19. No subsidiary legislation shall come into operation unless it has been published in the Gazette, but the date of commencement thereof, or of any part thereof, shall be in accordance with the provisions of sections 20, 21 and 22.

Publication of subsidiary legislation

20. (1) Where no date of commencement is expressly provided therein or in any other written law, subsidiary legislation shall, subject to section 22, come into operation upon the expiry of the day immediately preceding the day of its publication in the Gazette.

Commencement of subsidiary legislation

(2) Where it is expressly provided therein or in some other written law that subsidiary legislation shall come into operation on some specified day, such subsidiary legislation shall, subject to sections

21 and 22, come into operation upon the expiry of the day immediately next preceding that day.

(3) Subsidiary legislation made and published in the Gazette on the date of commencement of the written law or of the provision in the written law under which it was made shall, unless some other date of commencement is provided therein or in any other written law, be deemed to come into operation simultaneously with that written law or that provision, as the case may be.

(4) References in this section to the date of commencement of subsidiary legislation shall, where different provisions of such subsidiary legislation come into operation on different dates, be deemed to be references to the date of commencement of the appropriate provision or provisions of such subsidiary legislation.

Retrospective
operation of
subsidiary
legislation

21. Any subsidiary legislation may be made to operate retrospectively to any date, not being a date earlier than the date of commencement of the written law under which it was made, but so, however, that no person shall be made or become liable to any penalty whatsoever in respect of any act committed or failure to do anything before the day on which such subsidiary legislation is published in the Gazette.

Exercise of
power
between
publication
and com-
mencement
of written law

22. Where a written law which is not to come into force immediately on the date of publication thereof confers power to—

(a) make or a power exercisable by making subsidiary legislation;

(b) make appointments; or

(c) do any other thing for the purposes of such written law, that power may be exercised at any time on or after the date of publication of such written law in the Gazette:

Provided that no subsidiary legislation, appointment or thing made or done under that power shall take effect until the written law or the empowering provision thereof comes into operation except to such extent as may be necessary for bringing such written law or empowering provision into operation.

General
provisions
relating to
subsidiary
legislation
and exercise
of powers

23. (1) Where any subsidiary legislation or appointment or any other thing purports to be made or done in exercise of a particular power or particular powers, it shall be deemed also to be made or done in exercise of all powers thereunto enabling.

(2) Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it was made, or of any Act, and any such subsidiary legislation shall be void to the extent of the inconsistency.

(3) Where a written law confers a power to make subsidiary legislation it shall be deemed also to include a power exercisable in

in the like manner and subject to the like conditions (if any) to amend, repeal or replace any such subsidiary legislation:

Provided that if the person on whom such power is conferred has been lawfully replaced wholly or in part by another person, the power conferred on the original person may be exercised by the replacing person or a replacing person concerning all matters or things within his jurisdiction as if he were the original person.

(4) Where by a written law power is conferred on any person to make subsidiary legislation or to do anything for any general purpose, and also for any special purpose or purposes incidental thereto, the enumeration of the special purpose or purposes shall not be deemed to derogate from the generality of the powers conferred with reference to the general purpose.

(5) Terms and expressions used in subsidiary legislation shall have the same meanings as in the written law under which such subsidiary legislation was made.

(6) Any reference in subsidiary legislation to "the Act" shall be construed as a reference to the Act under which it was made, and this construction shall apply *mutatis mutandis* to other expressions of a similar nature where the subsidiary legislation is made under a written law that is not an Act.

(7) Where by a written law power is conferred on any person to make subsidiary legislation, there shall also be deemed to be included power to provide in respect of any contravention of any provision thereof or failure to comply therewith that the offender shall be liable to a fine not exceeding R200 or to a term of imprisonment not exceeding six months or to both such fine and imprisonment as the authority making the subsidiary legislation thinks fit.

(8) Any act done under or by virtue of or in pursuance of subsidiary legislation shall be deemed to be done under or by virtue of or in pursuance of the written law conferring power to make the subsidiary legislation.

(9) Subsidiary legislation may provide for the imposition of fees and charges in respect of any matter with regard to which provision is made in such subsidiary legislation or in the written law under which such subsidiary legislation is made.

24. Any reference to a written law shall include a reference to any subsidiary legislation made under the written law to which the reference is made.

Reference to written law to include subsidiary legislation

25. (1) Where any written law confers power on any person to make any subsidiary legislation and provision may be made by such subsidiary legislation in respect of fees or other charges, there shall also be deemed to be included power to provide in such subsidiary legislation for all or any of the following matters:

Fees and charges

- (a) specific fees or charges;
- (b) maximum or minimum fees or charges;
- (c) maximum and minimum fees or charges;
- (d) *ad valorem* fees or charges;
- (e) the payment of fees or charges either generally or under specified conditions or in specified circumstances; and
- (f) the reduction, waiver or refund, in whole or in part, of any such fees or charges, either upon the happening of a certain event or in the discretion of a specified person.

(2) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for, such reduction, waiver or refund may be expressed to apply or to be applicable either generally or specifically –

- (a) in respect of certain matters or transactions or classes of matters or transactions;
- (b) in respect of certain documents or classes of documents;
- (c) when any event happens or ceases to happen;
- (d) in respect of certain persons or classes of persons; or
- (e) in respect of any combination of such matters, transactions, documents, events or persons, and may be expressed to apply or to be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified therein.

Forms

26. (1) Where any written law confers power on any person to prescribe any form, then unless or until such person prescribes such form, any form approved for the purpose by such person may be used.

(2) Where any form has been prescribed by or under any written law, a document or instrument which purports to be in such form shall not be void by reason of any deviation therefrom which does not affect the substance thereof or which is not calculated to mislead.

Rules, etc.
to be laid
before the
National
Assembly

27. All rules, regulations and orders shall be laid before the National Assembly as soon as may be after they are made, and, if a resolution is passed within the next subsequent twenty-one days on which the National Assembly has sat after any such rules, regulations or orders are laid before it that such rules, regulations or orders be annulled, they shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the making of any new rules, regulations or orders:

Provided that the provisions of this section shall not apply to rules of court.

PART IV. *Powers and Duties*

28. (1) Subject to the provisions of section 30, where by or under any written law any specified Minister or public officer is empowered to exercise any power or perform any duty, the President may transfer the exercise of such power or the performance of such duty, subject to such conditions, exceptions or qualifications as the President may specify, to -

Transfer

- (a) a specified Minister;
- (b) a Minister, without specifying which Minister; or
- (c) a specified public officer or the holder for the time being of a specified public office,

and thereupon, or from a date specified by the President, the transferee shall exercise such power and shall perform such duty in place of the Minister or public officer originally so empowered.

(2) Where a transfer is made under this section, the written law in respect of which it is made shall be read and construed in respect of any time on or after the date upon which the transfer has effect as if the written law were amended in conformity with the transfer:

Provided that nothing in such transfer or this subsection shall affect the validity of the delegation, by a previous holder, of any such power or duty, but the same shall continue of force and effect as if the power or duty had been delegated by the current holder of the power or duty, until revoked by an authority having power in that behalf, or until it expires.

29. (1) Subject to the provisions of section 30, where by or under any written law the President is empowered to exercise any powers or perform any duties, he may delegate to any person by name, or the person for the time being holding the office designated by him, to exercise such powers or perform such duties on his behalf, subject to such conditions, exceptions or qualifications as the President may direct, and thereupon or from a date specified by the President the delegatee shall exercise such powers and shall perform such duties.

Delegation
of functions
by President
or a Minister

(2) Subject to the provisions of section 30, where by or under any written law a Minister is empowered to exercise any powers or perform any duties, he may delegate to any person by name, or the person for the time being holding the office designated by him, to exercise such powers or perform such duties on his behalf, subject to such conditions, exceptions or qualifications as the Minister may direct, and thereupon or from a date specified by the Minister the delegatee shall exercise such powers and shall perform such duties.

(3) The President, or a Minister, may exercise any power or perform any duty notwithstanding that he has delegated the exercise

or performance thereof to some other person, and may from time to time cancel or vary any such delegation.

Exceptions

30. (1) The President shall not transfer or delegate the exercise of any power or the performance of any duty —

- (a) conferred or imposed upon him or a Minister or a public officer by the Constitution; or
- (b) which he is expressly prohibited from transferring or delegating by any written law; or
- (c) of a judicial nature.

(2) A Minister shall not delegate the exercise of any power or the performance of any duty —

- (a) conferred or imposed on him by the Constitution; or
- (b) to make any subsidiary legislation;
- (c) to hear appeals; or
- (d) which he is expressly prohibited from delegating by any written law.

Signification of exercise of powers

31. Where by or under a written law the President, the Vice-President or any other Minister has exercised any power to make subsidiary legislation or any appointment, or to give any direction, issue any order, authorize any thing or matter to be done, grant any exemption, remit any fee or penalty, or has exercised any other power or performed any other duty, it shall be sufficient if the exercise of such power or the performance of such duty be signified —

- (a) in the case of the President, under the hand of the Vice-President, any other Minister, an Assistant Minister, or a Permanent Secretary; or
- (b) in the case of the Vice-President or any other Minister, under the hand of an Assistant Minister or a Permanent Secretary.

Certificate of Attorney-General

32. A certificate of the Attorney-General that the responsibility for any matter, or for the exercise of any power or the performance of any duty has been assigned to, transferred to or delegated to the Vice-President, any other Minister, any Assistant Minister, any Permanent Secretary or any other person, or has been retained by the President, shall be accepted by all courts, and for all purposes, as evidence of the matters stated therein, unless the contrary be proved.

Change in title or abolition of public office

33. (1) Where any change in title of any public office occurs, the President may notify such change in the Gazette, and the date on which such change shall take effect, and thereafter, with effect from such date any reference in any written law to the former title of such public office shall be read and construed as a reference to that public office by its new title.

(2) Where any public office is abolished the President may notify such abolition and the date on which it shall take effect in the

Gazette, and may in such notice also declare that any function vested under any written law in the office which is abolished shall vest in some other office specified in such notice, and thereafter, with effect from such specified date, any reference in any written law to the office which has been abolished shall be read and construed as a reference to the other office so specified.

34. (1) Where any written law confers power on any person to do or to enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are necessary to enable the person to do or to enforce the doing of the act or thing.

Construction
of enabling
words

(2) Where any written law confers any power or imposes any duty, such power may be exercised and such duty shall be performed from time to time as occasion requires.

(3) Where any written law confers any power or imposes any duty on the holder of any office as such, then such power may be exercised and the duty shall be performed by the person for the time being holding that office.

(4) Where any written law confers any power or imposes any duty on any person and that person is also empowered to delegate his functions to any other persons --

(a) such power or duty may be made in respect of all or any of the functions concerned;

(b) any such delegation may be made subject to such conditions or restrictions as the delegator may impose in such delegation;

(c) any such power of delegation may be exercised from time to time as occasion requires;

(d) any such delegation may be cancelled or amended as occasion requires; and

(e) the exercise of such power of delegation shall be without prejudice to the right of the delegator to exercise such functions himself.

(5) Without prejudice to the generality of subsection (4), where a written law confers power to --

(a) provide for, prohibit, control or regulate any matter or thing, such power shall include power to provide for the same by the licensing thereof or the granting of permits therefor, and power to prohibit acts whereby the prohibition, control or regulation of such matter or thing might be evaded;

(b) grant a licence, lease, right, permit, authority, approval or exemption, such power shall include power to impose reasonable conditions subject to which such licence, lease, right, permit, authority, approval or exemption may be granted;

(c) prosecute any person, matter or thing, such power shall include power to withdraw approval thereof;

(d) give directions, such power shall include power to couch the same in the form of prohibitions.

(6) In any written law, instrument, document, appointment, warrant or process of any kind, any reference to a person holding an office shall include a reference to any person for the time being acting in or lawfully discharging the functions of that office.

Power to
issue licences,
etc.,
discretionary

35. (1) Where any written law confers power upon any person to issue, grant, give or renew any licence, lease, right, authority, approval or permit the person so empowered shall have a discretion either to issue, grant, give or renew or to refuse to issue, grant, give or renew such licence, lease, right, authority, approval or permit.

(2) Nothing in this section shall affect any right which may be conferred by any written law upon any person to appeal against a refusal to issue, grant, give or renew any licence, lease, right, authority, approval or permit.

Power to
appoint, etc.,
includes
power to
suspend,
dismiss, etc.

36. (1) Where any written law confers a power or imposes a duty upon any person to make any appointment or designation or to constitute or establish any board, tribunal, commission, committee, council or other similar body, then the person having such power or duty shall also have power to —

(a) remove, suspend, dismiss or revoke the appointment or designation of, and to re-appoint or reinstate or redesignate, any person appointed or designated in exercise of such power or duty;

(b) appoint or designate a person to act temporarily in place of the person so appointed or designated to or for office where the last named person is so suspended or unable by reason of illness, or absence or other cause to perform the functions of such office;

(c) revoke the appointment, constitution or establishment of, or to dissolve any board, tribunal, commission, committee, council or other similar body appointed, constituted or established in exercise of such power or duty, and to re-appoint, reconstitute or re-establish the same; and

(d) specify the period for which any person appointed or designated in exercise of such power or duty shall hold such appointment or be so designated:

Provided that where the power or duty of such person so to act is only exercisable upon the recommendation, or is subject to the approval, concurrence or consent, of some other person, then such power shall only be exercisable upon such recommendation or subject to such approval, concurrence or consent.

(2) Where by any written law any authority is empowered to appoint or designate a person to —

(a) exercise any power or perform any duty;

(b) be a member of any board, tribunal, commission, committee, council or other similar body, whether corporate or unincorporate; or

(c) be or do any other thing,

that authority may, make the appointment or designation either by appointing or designating a person by name or by appointing or designating the holder of an office by the term designating his office; and any such appointment or designation of the holder of an office shall be construed as the appointment or designation of the person for the time being holding, acting in or lawfully performing the functions of the office.

(3) Any appointment or designation made under the provisions of any written law may be declared to have effect as from the date upon which the person appointed or designated in fact began to exercise the powers and perform the duties of the office to which he is appointed or designated, not being a date earlier than the date of commencement of the written law under which the appointment or designation is made.

37. (1) Where by or under any written law any board, tribunal, commission, committee, council or other similar body, whether corporate or unincorporate, is established, any person who is by or under such written law empowered to appoint any or all of the members thereof may —

Power to appoint alternate or temporary members, etc.

(a) appoint one or more duly qualified persons to be alternate members of the same, and any one such alternate member may attend any meeting of the same when a substantive member is temporarily unable to attend;

(b) appoint a duly qualified person to be a temporary member of the same in the place of any substantive member who is precluded by illness, absence from Botswana or other cause from exercising his functions as such,

and when attending any meeting of such board, tribunal, commission, committee, council or body, such alternate or temporary member shall be deemed for all purposes to have all the powers of the member whose place he is taking.

(2) Where by or under any written law a power is conferred on any person to appoint the members of any board, tribunal, commission, committee, council or other similar body, whether corporate or unincorporate, that person may appoint a chairman, a vice-chairman, and a secretary of the same.

38. Where by or under any written law any board, tribunal, commission, committee, council or other similar body, whether corporate or unincorporate, is established, the powers of such board, tribunal, commission, committee, council or body, shall not be affected by —

Power of board, etc. not affected by vacancy or certain defects

- (a) any vacancy in the membership thereof; or
- (b) any defect afterwards discovered in the appointment or qualifications of a person purporting to be a member thereof.

Authenti-
cation of
decisions,
etc., and
affixing of
common seal

39. (1) In the absence of express provision to the contrary, a document, other than a document required to be under seal, and a decision of any board, tribunal, commission, committee, council or other similar body, whether corporate or unincorporate, which requires authentication may be authenticated by the signature of the chairman of or other person authorized by the board, tribunal, commission, committee, council or body.

(2) Where by or under any written law any board, tribunal, commission, committee, council or other similar body is constituted to be a corporate body having perpetual succession and a common seal, and any document is required to be sealed with such common seal, then, in the absence of express provision to the contrary, such common seal shall be affixed by the chairman of such board, tribunal, commission, committee, council or body and shall be authenticated by his signature and by the signature of one other member of such board, tribunal, commission, committee, council or body.

Power of
majority
and powers of
chairman,
etc.

40. (1) Where any written law confers a power or imposes a duty upon a body or number of persons consisting of or being not less than three, such power may be exercised or duty performed in the name of that body or number of persons by a majority of those persons.

(2) Whenever such body or number of persons is assembled, the chairman or other person presiding shall have a deliberative vote, and, where there is an equality of votes, a casting vote, in all matters in which a decision is taken by vote, by whatever name such vote may be called.

Change in
title of
statutory
body

41. Whenever the title of any corporation, board, tribunal, commission, committee, council or other body, corporate or unincorporate, established by any written law is changed or replaced by any other written law, then, from the date on which such change or replacement takes effect, any reference to such body by its former title shall be read and construed as a reference to that body by its changed or replaced title.

Power to
appoint
substantively
pending
retirement,
etc.

42. (1) Where the substantive holder of any public office constituted by or under any written law is on leave of absence pending relinquishment by him of such office, it shall be lawful for another person to be appointed substantively to the same public office.

(2) Where two or more persons are holding the same public office by reason of an appointment made in accordance with subsection (1), then, for the purposes of every written law and in respect of every power conferred or duty imposed upon the holder of such office, the last person appointed to the office shall be deemed to be the holder thereof.

PART V. *General Provisions Regarding Time and Distance*

43. (1) Words relating to time and references to a point of time shall be construed as relating to or references to standard time as used in Botswana, that is to say, two hours in advance of Greenwich Mean Time.

(2) The expression "a.m." indicates the period between midnight and the following noon, and the expression "p.m." indicates the period between noon and the following midnight; where two such expressions occur conjunctively in relation to any specified hour, or in conjunction with the word "sunset" or "sunrise", they shall be construed as relating to a consecutive period of time.

- 44.** (1) In computing time for the purposes of any written law —
- (a) where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the day next following that is not an excluded day;
 - (b) where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen;
 - (c) where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating the number of days there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens;
 - (d) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the day next following that is not an excluded day;
 - (e) where any act or proceeding is directed or allowed to be done or taken within a number of clear days or "not more than" a number of days not exceeding six clear days, excluded days shall not be reckoned in the computation of such number;
 - (f) where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time shall include that day;
 - (g) where a time is expressed to begin after or to be from a specified day, the time shall not include that day;
 - (h) where anything is to be done within a time after, from or before a specified day, the time shall not include that day;

- (i) where there is a reference to a period of time consisting of a number of months after or before a specified day, the number of months shall be counted from, but not so as to include, the month in which the specified day falls, and the period shall be reckoned as being limited by and including —
 - (i) the day immediately after or before the specified day, according as the period follows or precedes the specified day; and
 - (ii) the day in the last month so counted having the same calendar number as the specified day, but if such last month has no day with the same calendar number, then the last day of the month.

(2) For the purposes of this section an "excluded day" means a Sunday or a public holiday.

Provision where no time prescribed

45. Where no time is prescribed or allowed within which any act or thing shall be done, such act or thing shall be done without unreasonable delay, and as often as due occasion arises.

Power to extend time

46. Where a time is prescribed or allowed for doing any act or thing or taking any proceeding and power is given to a court or other authority to extend such time, then such power may be exercised by the court or other authority although the application for the same is not made until after the expiration of the time prescribed.

Distance

47. In the determination of any distance, the measured distance shall be reduced to that distance which would be recorded if the distance were measured in a straight line on a horizontal plane.

PART VI. *General Provisions Regarding Legal Proceedings*

Evidence of signature of President, Minister, etc.

48. Where the fiat, consent or authority of the President, a Minister, the Attorney-General or other public officer is necessary before any prosecution, action or other proceeding is commenced, any document purporting to bear the fiat, consent or authority of the President, Minister, Attorney-General or such public officer shall be received and accepted as evidence in any prosecution, action or other proceeding without proof being given that the signature to such fiat, consent or authority is that of the President, Minister, Attorney-General or such other public officer, unless the contrary be proved.

Ex-officio proceedings not to abate on death

49. Any civil or criminal proceedings taken by or against any person in virtue of his office shall not be discontinued or abated by his death, resignation or absence or removal from office, but may be carried on by or against, as the case may be, the person for the time being holding, acting in or performing the functions of that office.

50. The imposition of a penalty or fine by or under the authority of any written law shall not, in the absence of express provision to the contrary, relieve any person from liability to answer for damages to any person injured.

Imposition of penalty no bar to civil action

51. Where an act or omission constitutes an offence against any two or more written laws or both under a written law and any customary law, the offender shall be liable to be prosecuted and punished under either or any of such written laws or under customary law, but shall not be liable to be punished twice for the same offence.

Provisions as to offences under two or more laws

52. Where an act or omission constitutes an offence and the penalty, forfeiture or punishment for such offence is amended between the time of the commission of such offence and the conviction therefor, the offender shall, in the absence of express provision to the contrary, be liable to the penalty, forfeiture or punishment prescribed at the time of the commission of the offence:

Amendment of penalties

Provided that where the penalty, forfeiture or punishment is reduced or mitigated by the amending enactment, such penalty, forfeiture or punishment, if imposed or adjudged after the amendment, shall be reduced or mitigated accordingly.

53. (1) Where in any written law a penalty is prescribed for an offence, such provision shall mean that the offence shall be punishable by a penalty not exceeding the penalty prescribed.

Penalties prescribed shall be maximum penalties, but may be cumulative

(2) Where in any written law more than one penalty is prescribed for an offence, the use of the word "and" shall mean that the penalties may be imposed alternatively or cumulatively.

54. (1) Where by or under the provisions of any written law any animal or thing is declared, or is under any written law adjudged by any court or other authority, to be forfeited, it shall, in the absence of express provision to the contrary, be forfeited to the Government, and the net proceeds thereof, if it is ordered by a competent court or authority to be sold, shall be paid into the Consolidated Fund.

Disposal of forfeits, fines and penalties

(2) Any fine or forfeit imposed by or under the authority of any written law shall, in the absence of express provision to the contrary, be paid into the Consolidated Fund.

(3) Nothing in this section shall be deemed to affect any provision in any written law whereby any portion of any fine or penalty or forfeit or the proceeds of any forfeit is expressed to be recoverable by any person or may be granted by any court or authority to any person.

PART VII. *Miscellaneous General Provisions*

55. The production of a copy of the Gazette containing any written law or any notice of any kind, or of a copy of any such written

Gazette to be evidence

law or notice purporting to be printed by the Government Printer, shall be accepted as evidence in all courts and for all other purposes of the due making and tenor of such written law or notice, and without proof being given that such copy of the Gazette was so printed, unless the contrary be proved.

Act for which payment required need not be performed until payment made

56. Where any person is required to do anything for which a fee is to be paid or a charge made under any written law, such person may decline to do that thing until the fee is paid or until payment of the charge is made, or, where the precise amount of the payment cannot be ascertained until the thing has been done, until there is paid such amount as may be estimated to be the correct amount by the person required to do the thing.

Ascertainment of age

57. (1) A person shall be deemed not to have attained a specified number of years of age until the commencement of the anniversary, of the same number, of the day of his birth.

(2) Save as may be otherwise expressly provided, whenever by reason of a reference in a written law to the age of a living person his age needs to be ascertained, any authority administering or applying that law shall, in the absence of precise evidence relating thereto, estimate the age of such person by his appearance or from any information, including medical opinion, which may be available, and the age so determined shall be deemed, until the contrary is proved, to have been correctly ascertained:

Provided that in judicial proceedings any information so given shall be given on oath.

Common names

58. The name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not the formal or extended designation thereof.

Control of certain corporations Proc. 71 of 1959

59. A corporation which is established by a written law, or a corporation registered in accordance with the Companies Proclamation, 1959, in which Government owns a majority of all the equity shares, shall, in the conduct of its affairs, be subject to any special or general directions of the Minister directly responsible for the corporation, or, where no Minister is responsible, by the Minister of State.

Saving of rights of Republic, etc.

60. No written law shall in any manner whatsoever bind the Government or affect the rights of the Republic except only as is therein expressly provided or as by necessary implication therein appears.

61. This Act shall bind the Government.

Act to bind
Government

62. The Interpretation and General Provisions Act, 1966, and the Acts of Parliament Law, 1966, are hereby repealed.

Repeal
13 of 1966
15 of 1966

Passed by the National Assembly this 6th day of December, 1973.

R.J. CHILUME,
Acting Clerk of the National Assembly.