

BOTSWANA TELECOMMUNICATIONS CORPORATION ACT, 1980

No. 3



of 1980

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An Act to provide for the establishment of a Corporation to be known as the Botswana Telecommunications Corporation for the provision, development, operation and management of Botswana's National and International Public Telecommunications Services and for matters connected therewith or incidental thereto

Date of Assent: 1.4.80

Date of Commencement: 1.4.80

ENACTED by the Parliament of Botswana

PART I *Preliminary*

Short title 1. This Act may be cited as the Botswana Telecommunications Corporation Act, 1980.

Interpretation 2. In this Act, unless the context otherwise requires, —
“Corporation” means the Botswana Telecommunications Corporation established by section 3;
“financial year” means the year ending on 31st March in each year;
“prescribed” means prescribed by regulations made under section 30;
“telecommunications services” includes telephone, telex, telegraph, data facsimile and leased circuit services, together with appropriate terminal equipment;
“telephone lines” means all cables and overhead lines, whether constructed or due to be constructed, for the connexion of subscribers or the interconnexion of exchanges, together with any junctions or other equipment necessary to effect these connexions;
“undertaking” means any business for the provision of telecommunications services.

PART II *Establishment, Constitution and Membership of Corporation*

Establishment of Corporation 3. (1) There is hereby established a corporation to be known as the Botswana Telecommunications Corporation.

(2) The Corporation shall be a body corporate capable of suing and of being sued in the name of the Botswana Telecommunications Corporation and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

4. (1) The governing body of the Corporation shall be a Board consisting of the following members appointed by the Minister – Composition of Corporation

- (a) the Chairman;
- (b) the Chief Executive of the Corporation appointed under section 10, *ex officio*; and
- (c) not less than 5 or more than 7 other persons who in the opinion of the Minister have knowledge and experience likely to contribute to the successful management of the Corporation.

(2) A person shall not be competent to be appointed or to act as a member of the Board if –

- (a) he is a member of the National Assembly;
- (b) he is an employee of the Corporation; or
- (c) he has been declared insolvent or bankrupt under any law in any country and has not been discharged, or has made a composition with his creditors and has not paid his debts in full.

5. (1) Any member of the Board other than the Chief Executive may resign his membership of the Board by notice in writing addressed to the Minister. Resignation and removal from office

(2) A member of the Board may be removed from membership thereof if he –

- (a) ceases to hold the office by virtue of which he was appointed;
- (b) becomes of unsound mind;
- (c) is declared insolvent or bankrupt under any law in force in any country;
- (d) suspends payment of his debts or compounds with his creditors;
- (e) is absent from 3 consecutive meetings of the Board without such reason as appears to the Minister to be sufficient;
- (f) is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
- (g) is guilty of serious misconduct in relation to his duties as Chairman or member of the Board; or
- (h) in the case of a person possessed of professional qualifications, is disqualified or suspended, otherwise than at his own request, from practising his profession in Botswana or in any other country by order of any competent authority made in respect of him personally.

6. (1) A member of the Board, other than the Chairman and the Chief Executive, shall hold office for such period, not exceeding 4 years, as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for reappointment: Tenure of office

Provided that in appointing members of the Board the

Minister shall specify such periods of appointment that the periods of appointment of not more than one-third of the members shall expire in any one year.

(2) The Chairman of the Board shall hold office as Chairman for a period of 3 years, and may be reappointed for any further period of 3 years.

(3) The Board shall once in every year elect from among its members (other than the *ex officio* member) a Vice-chairman who shall hold office as Vice-chairman for a period of one year.

(4) Subject to the provisions of this Act, where any member of the Board is incapacitated by absence from Botswana, or illness or any other sufficient cause, from performing the duties of his office, the Minister shall appoint another person to hold office in his place until the incapacity of that person has terminated or until the term of office of such member expires, whichever first occurs.

Payment of
members

7. The Board shall pay to the members thereof such remuneration, fees and allowances for expenses as may be approved by the Minister.

PART III *Meetings and Proceedings of Board*

Meetings

8. (1) The Board shall meet for the discharge of its functions at such times and places as the Chairman may appoint, so however that the Board shall meet at intervals not exceeding 6 months.

(2) The Chairman or in his absence the Vice-chairman may, and shall on the request in writing of not less than 2 members of the Board, call an extraordinary meeting of the Board at such time and place as he may determine.

(3) The Chairman or, in his absence, the Vice-chairman shall preside at every meeting of the Board.

(4) In the absence of both the Chairman and the Vice-chairman, the members present shall elect one of their number to preside at the meeting.

(5) The quorum at any meeting of the Board shall be not less than one-half of the members of the Board.

(6) All questions proposed at a meeting of the Board shall be determined by a majority of the members present and voting, and, where the votes are equal, the Chairman or the person presiding shall have a second or a casting vote.

(7) Any member of the Board who has an interest, or whose spouse has an interest, in any company or undertaking with which the Board proposes to make a contract or, has an interest in any contract which the Board proposes to make, shall disclose the nature of his interest, and shall not vote or take any part in the proceedings of the Board relating to such contract.

(8) The Board may, and shall if the Minister thinks fit, request the attendance of any person to act as adviser at any meeting of the Board, and that person while so attending shall have all the powers of a member except that he shall not vote on any question and his presence at the meeting shall not count towards the constitution of a quorum.

(9) The validity of any act or proceedings of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of a member thereof.

(10) The Board may from time to time make standing orders providing for the regulation of —

- (a) the meetings of the Board;
- (b) the conduct of its business and other operations in carrying out its functions; and
- (c) the duties of its officers, employees and agents.

9. All documents made by, and all decisions of, the Board may be signified under the hand of the Chairman of the Board, the Chief Executive or any member or senior officer of the Corporation generally or specially authorized in that behalf. Signification
of documents

PART IV *Officers, Employees and Agents of Corporation*

10. (1) The Corporation shall have a Chief Executive who shall be appointed by the Minister upon such terms and conditions as may be determined by the Corporation. Appointment
of officers
and employees

(2) No person shall be appointed as the Chief Executive of the Corporation unless he is qualified by experience and training and has demonstrated that he is competent to manage and operate the undertakings of the Corporation.

(3) The Chief Executive of the Corporation shall, subject to such directions on matters of general policy as may be given by the Corporation, be charged with the direction of the business of the Corporation and of its administration and organization, and the control of the employees of the Corporation.

(4) The Chief Executive may resign from office by notice in writing addressed to the Minister, and may be removed from office by the Minister.

(5) The Chief Executive may delegate to any senior officer of the Corporation the exercise of any powers which he is authorized to exercise under this Act.

(6) (a) The Board shall, on consideration of the recommendations of the Chief Executive, from time to time determine the staff deemed necessary for the proper discharge of the functions of the Corporation and the terms and conditions of employment.

(b) The appointment and dismissal of all persons to or from positions designated by the Corporation as held by senior officers

shall be made by the Board on consideration of recommendations of the Chief Executive.

(c) The appointment and dismissal of all other staff shall be made by the Chief Executive or such senior officer as he may delegate to perform this function.

(7) The Corporation may –

(a) grant pensions, gratuities or retiring allowances to any officer or employee and may require such officer or employee to contribute to any pension or contributory scheme;

(b) for the benefit of its officers and employees, establish and make contributions to any pension or superannuation fund or medical fund; and

(c) from time to time appoint and employ upon such terms and conditions as it may think fit such agents and contractors as it may deem necessary.

(8) Public officers may be transferred or seconded to the Corporation or may otherwise give assistance thereto.

Delegation
to committee

11. The Board may, by resolution, delegate to any committee of the Corporation the exercise of any of the powers which the Corporation is authorized by this Act to exercise either generally or in any particular case.

PART V *Functions, Powers and Duties of Corporation*

Functions
and powers

12. (1) The functions of the Corporation shall be the provision of all public telecommunications services, both national and international, for Botswana, together with such other activities as may appear to the Corporation to be conducive or incidental to the attainment of all or any of its objectives under this Act or under any other law.

(2) The Corporation shall have all powers necessary or convenient for the performance of its functions and duties and, without prejudice to the generality thereof, shall have the power to –

(a) acquire, construct, install, assemble, repair, maintain, operate or remove telephone exchanges, radio stations, telephone lines, masts, towers, all types of telecommunications apparatus, fittings and installations;

(b) acquire and use any kind of property, undertaking, right or privilege and dispose of the same to the Government, or to any person other than a member, officer or employee of the Corporation, or any agent or contractor, appointed or employed by the Corporation.

(c) use or acquire telecommunications apparatus or services;

(d) enter into agreements in connexion with the operation of telecommunications services;

(e) supply or sell telecommunications services to all persons desiring such services;

- (f) enter into such contracts as may be necessary for the performance of its functions and duties;
- (g) construct or cause to be constructed such works, houses, offices and other buildings and structures as it may deem necessary or expedient for the performance of its functions and duties;
- (h) purchase, take on lease or otherwise acquire or construct or cause to be constructed such tools, appliances, machinery, plant and equipment as it may deem necessary or expedient for the performance of its functions and duties;
- (i) sell, exchange, lease, dispose of, turn to account or otherwise deal with any of its assets or any part thereof, whether movable or immovable, not required for its purposes, provided that the Corporation may not sell any of its immovable property without the approval in writing of the Minister for the time being responsible for finance;
- (j) invest from time to time, in such manner as it may deem fit, such moneys held by it as may be surplus to its immediate requirements, subject to the approval in writing of the Minister for the time being responsible for finance;
- (k) insure with any company or person against any losses, damages, risks or liabilities which the Corporation may incur;
- (l) purchase or sell any materials and stores used in the performance of its functions;
- (m) sell, hire or otherwise dispose of telecommunications apparatus or services;
- (n) carry on any activity which is reasonably requisite or convenient for or in connexion with the discharge of its functions under this Act.

13. (1) The Corporation shall have the exclusive privilege of constructions and maintaining public telecommunications services, both national and international, for Botswana.

Exclusive
privilege of
Corporation

(2) The Corporation may grant a licence on such conditions as it thinks fit to any person to construct and maintain a telecommunications service for the purpose of his private or business affairs.

(3) No person shall establish or use any station for telecommunications except under and in accordance with a licence granted under this section (in this Act referred to as a "telecommunications licence").

(4) Regulations may provide for the issue, conditions and duration of a telecommunications licence, and for the fee payable for the grant of such a licence.

14. In the discharge of its functions the Corporation shall co-operate with local and other public authorities, including departments and agencies of the Government, and shall consult

Co-operation
with
authorities

with local authorities in matters of concern to the Corporation which affect their interests.

Research
and records

15. With a view to facilitating present or future research or planning the Corporation shall keep full and accurate records of all its operations and shall have power to engage in research and to assist others to engage in research in respect of any matter relating to its functions, and to publish such records and the results of any such research.

Power of
Minister
to give
directions

16. The Minister may, after consultation with the Board, give to the Corporation such directions of a general or specific character as to the exercise and performance of its powers in fulfilling its functions as are necessary as a matter of public policy and as are not inconsistent with this Act or with the contractual or other legal obligations of the Corporation, and the Corporation shall give effect to any such direction.

PART VI *Finances*

Principles
of financial
operations

17. (1) It shall be the duty of the Corporation to conduct its affairs on sound commercial lines and, in particular, so to carry out its functions under this Act and so prescribe the charges payable in respect of the provision by the Corporation of telecommunications services as to ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable return measured by taking its net operating income as a percentage of the fair value of its fixed assets in operation plus an appropriate allowance for its working capital.

(2) For the purposes of this section "net operating income" means the amount of income remaining after subtracting from total operating revenues all charges which in accordance with generally acceptable accounting principles are chargeable to revenue accounts, including appropriate provisions for depreciation of assets, adequate maintenance and taxes, but before deducting interest and other charges on borrowing or taking into account non-operating income and expenditure.

(3) In determining what constitutes a reasonable return, all pertinent economic and financial considerations shall be taken into account, which shall include but not be limited to the need for net operating income in an amount sufficient —

- (a) to meet interest payments on borrowings;
- (b) to provide for repayments to be made each year in respect of loans incurred by the Corporation to the extent to which such repayments exceed the year's provision for depreciation charged to revenue accounts;
- (c) to provide a reasonable proportion of the funds needed for expanding the Corporation's activities and improving its services;

- (d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Corporation deems it necessary to establish such reserves; and
- (e) to make dividend payments to the Government in respect of its equity interest in the Corporation if and to the extent deemed appropriate by the Corporation, after consultation with the Minister and the Minister for the time being responsible for finance and having regard to the future financial requirements of the Corporation.

18. (1) The Corporation shall, with the approval of the Minister, Fixing of tariffs which approval shall not unreasonably be withheld, prescribe the tariffs at which it provides telecommunications services so as to ensure that it is able to comply with the provisions of section 17.

(2) The Corporation may prescribe different tariffs or methods of charge for different classes or categories of service and for different areas or places.

19. (1) In order to enable the Corporation to discharge its Borrowing powers functions under this Act and to meet its obligations it may borrow, on such terms and in such currencies as may be agreed between it and any lender, such sums as it may require, subject to the approval of the Minister for the time being responsible for finance.

(2) The Corporation may charge its assets, undertakings and revenues with the repayment of any money borrowed together with interest thereon and may issue debentures, bonds or other securities in order to secure the repayment of any money borrowed together with interest thereon and may do all other things necessary in connexion with or incidental to such borrowings as are authorized by this section, subject to the approval of the Minister for the time being responsible for finance.

20. (1) Any properties, assets, rights, debts, liabilities and obligations of the Government and the benefit and burden of all contracts made by or on behalf of the Government which are part of or concern or relate to the telecommunications division of the Department of Posts and Telecommunications may, with the consent of the Corporation, be transferred to and vest in the Corporation as hereinafter provided on terms and conditions agreed to by the Corporation. Vesting of property in Corporation

(2) The Minister may from time to time, by notice published in the Gazette, designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government and contracts made by or on behalf of the Government which are part of, concern or relate to the telecommunications division of the Department of Posts and Telecommunications, and as from the date specified in any such designation the properties, assets,

rights, debts, liabilities and obligations and the benefit and burden of the contracts so designated shall vest in the Corporation.

(3) (a) For the purposes of this subsection "the appropriate date" means, in respect of any loan agreement made between the Government and any person whereby money was or is to be borrowed by the Government and used for or in connexion with the telecommunications division of the Department of Posts and Telecommunications, the date of the vesting of such loan agreement in the Corporation by virtue of the foregoing provisions of this section.

(b) The Corporation shall pay to the Government, in such manner and on such date or dates as the Minister may, with the concurrence of the Corporation and the Minister for the time being responsible for finance, from time to time specify, any amount expended or advanced by the Government on or in connexion with the telecommunications division of the Department of Posts and Telecommunications comprising –

- (i) all amounts repaid in respect of capital or interest by the Government to any person before the appropriate date under any loan agreement to which paragraph (a) applies;
- (ii) all amounts disbursed or to be disbursed by the Government in repayment of any other loan raised or to be raised by the Government and interest thereon to the extent to which such loan has been or will be applied to the telecommunications division of the Department of Posts and Telecommunications which, before the date specified in a designation pursuant to subsection (2), had not been off-set by an amount or amounts credited to the Consolidated Fund for that purpose;
- (iii) amounts equal to the outstanding debit balance of any advances made by the Government and all costs incurred by the Government as a result of making such advances;
- (iv) any other amounts paid or to be paid by the Government which, before the date specified in a designation pursuant to subsection (2), had not been off-set by an amount or amounts credited to the Consolidated Fund for that purpose.

(4) If, within one month from the date specified by the Minister under subsection (3) (b) for the payment of any amount payable by the Corporation to the Government under that subsection, the Corporation fails to pay such amount, it shall pay interest thereon as from the date specified as aforesaid at such rate or rates as the Minister may, with the concurrence of the Minister

for the time being responsible for finance, from time to time determine.

21. Nothing in this Act shall exempt the Corporation from any tax, duty, rate, levy or other charge whatsoever, whether general or local. Liability to pay tax, etc.

22. (1) The Corporation shall keep proper accounts and other records in relation thereto, and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities (real and contingent) and income and expenditure of the Corporation, in a form which shall conform with the best commercial accounting standards applicable to the provision of telecommunications services. Accounts and audit

(2) The accounts of the Corporation in respect of each financial year shall, within 4 months or such extended time after the end thereof as the Minister may direct, be audited by the Auditor-General.

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

- (a) he has received all the information and explanations which, to the best of his knowledge and belief, were necessary for the performance of his duties as auditor;
- (b) the accounts and related records of the Corporation have been properly kept;
- (c) the Corporation has complied with all the financial provisions of this Act with which it is the duty of the Corporation to comply; and
- (d) the statement of accounts prepared by the Corporation 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 Corporation.

(4) The report of the Auditor-General and a copy of the audited accounts shall, within 7 days of the completion thereof, be forwarded to the Minister and to the Corporation.

(5) The Minister shall, within 30 days of receiving the report and a copy of the audited accounts, lay such report and accounts before the National Assembly.

PART VII *General*

23. (1) The Corporation shall, within a period of 6 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 its operations during such year together with the auditors' report and the audited accounts as provided for in section 22, and the Corporation shall publish them in such manner as the Minister may specify. Annual report

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| | (2) The Minister shall, within 30 days of his receiving the Corporation's report, lay such report before the National Assembly. |
| Compulsory acquisition of land | 24. For the purposes of any written law for the time being in force relating to the compulsory acquisition of land for public purposes, the functions and operations of the Corporation shall be deemed to be public purposes. |
| Resettlement measures | 25. If the operations of the Corporation make necessary the resettlement of any person dwelling upon any communally owned land, the terms of such resettlement shall be subject to the agreement of the Government and of the local authority of the area concerned. |
| Compensation for loss or damage | 26. (1) In the exercise of its powers under this Act in relation to the execution of works or interference with property the Corporation shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons who have sustained loss or damage for all loss or damage sustained by them by reason or in consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application of such compensation shall be determined by arbitration in accordance with the provisions of the Arbitration Act. |
| Cap. 06:01 | (2) For the purpose of such arbitration the parties shall be deemed to be parties to a submission in which the reference is to 2 arbitrators. |
| Power to call for information | 27. The Minister may, for purposes associated with the administration of this Act, require the Corporation to provide him with estimates of the Corporation's future revenue and expenditure, and with such other information relating to its activities and operations, including books of accounts, records, documents and agreements relating to the purchase or sale of telecommunications apparatus or services. |
| Power to make bye-laws | 28. The Corporation may make bye-laws for any purpose connected with its powers, functions and duties under this Act and may impose penalties for breach of any such bye-laws. |
| Protection from personal liability | 29. No matter or thing done by any member of the Corporation or by any officer or employee of the Corporation shall, if the matter or thing is done <i>bona fide</i> for the purpose of executing any provision of this Act, render such person or any person acting by his direction personally liable to any action, claim or demand whatsoever. |
| Power to make regulations | 30. The Minister may, after consultation with the Board, make regulations providing for any matter which under this Act is to be provided for by regulation or which otherwise relates to the administration of the Corporation. |
| Transitional provisions | 31. (1) Unless the contrary intention is indicated by the Board, every member of the staff of the telecommunications division of the Department of Posts and Telecommunications shall be |

deemed to have been duly appointed under this Act.

(2) Nothing in this Act shall be taken to effect any alteration in the terms of a contract subsisting immediately before the commencement of this Act or to authorize the making of any such alteration without the consent in writing of all parties bound by the contract.

32. (1) The provisions of the Post Office Act relating to the telecommunications division of the Department of Posts and Telecommunications are hereby repealed. Repeal
Cap. 72:01

(2) Notwithstanding the provisions of subsection (1), every licence granted under the provisions of the Post Office Act relating to the telecommunications division of the Department of Posts and Telecommunications and in force immediately before the commencement of this Act shall continue in force as if made or granted under the corresponding provision of this Act.

PASSED by the National Assembly this 1st day of April, 1980.

I.P. GONTSE,
Clerk of the National Assembly.