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An Act to provide for the merger of the Botswana Export Development and Investment Authority and the Botswana International Financial Services Centre into a single entity, (the Botswana Investment and Trade Centre).

Date of Assent: 12.09.2011

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

Short title and commencement

1. This Act may be cited as the Botswana Investment and Trade Centre Act, 2011, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

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

Cap. 74:08

“BEDIA” means the Botswana Export Development and Investment Authority established under the Botswana Export Development and Investment Authority Act;

“Board” means the Board of the Centre established under section 4 (1);

“Centre” means the Botswana Investment and Trade Centre established under section 3;

“Chairperson” means the Chairperson of the Board appointed as such under section 4 (2) (a);

“former entities” means the BEDIA and the IFSC;

Cap. 42:01

“IFSC” means the Botswana International Financial Services Centre, a company limited by guarantee and incorporated under the Companies Act on 12th March, 2003; and

Cap. 74:08

“repealed Act” means the Botswana Export Development and Investment Authority Act.

PART II – *Establishment of the Centre and Board of the Centre*

Establishment of the Centre

3. (1) There is hereby established a body to be known as the Botswana Investment and Trade Centre.

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

4. (1) There is hereby established a Board which shall perform the powers and functions as may be conferred on it by this Act.

Board of the Centre

(2) The Board shall consist of the following nine members —

- (a) a Chairperson, who shall be appointed by the Minister;
- (b) the Permanent Secretary responsible for trade and the Permanent Secretary responsible for finance, or their respective representatives;
- (c) four other persons appointed by the Minister and who, in the opinion of the Minister, have knowledge and experience likely to contribute to the successful management of the Centre;
- (d) a legal advisor, appointed by the Minister; and
- (e) the Chief Executive appointed by the Minister under section 14(1), who shall be entitled to attend all meetings of the Board but shall have no right to vote.

(3) The members of the Board shall elect, from among their number, a Vice Chairperson of the Board.

(4) A person shall not be appointed to be a member for more than five years at a time but shall be eligible for re-appointment for an aggregate period not exceeding ten years.

5. The Board shall —

Powers and functions of the Board

- (a) determine policy and the courses of action for giving effect to the objects and purposes of the Centre and of this Act;
- (b) monitor the performance of the Centre;
- (c) review, where necessary, the objects and purposes of the Centre and to recommend, to the Minister, such changes, consequent upon such review, as it considers appropriate; and
- (d) establish such committees as it considers necessary to assist it in the performance of the functions of the Centre, and may delegate, to such committee, such of its functions as it considers appropriate.

6. A person shall not be appointed as a member of the Board, nor shall any person be qualified to hold office as a member of the Board, who —

Disqualification for appointment as a Board member

- (a) has in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;
- (b) has, within a period of ten years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence, or
 - (ii) outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon; or
- (c) is the holder of an office in a political party, a councillor in a local authority or a member of the National Assembly.

Vacation of office

7. A member of the Board shall vacate his or her office and his or her office shall become vacant —

- (a) if he or she becomes disqualified in terms of section 6 to hold office as a member of the Board;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) if he or she is absent from three consecutive meetings of the Board, without reasonable excuse;
- (d) upon his or her death;
- (e) upon the expiry of one month's notice, given in writing to the Minister, of his or her intention to resign from office;
- (f) upon the expiry of such time as the Minister may specify in writing, notifying him or her of his or her removal from office by the Minister;
- (g) if he or she becomes mentally or physically incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect; or
- (h) if he or she is convicted of an offence under any Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.

Removal from office

8. The Minister may, if he or she is satisfied that a member of the Board has acted improperly as such member, require the member of the Board to vacate his or her office within such time as the Minister may, in writing, specify.

Filling of vacancies of the Board

9. On the vacation of office under section 7, the Minister shall appoint a person to take the place of the member who vacated his or her office until the expiry of the period during which such member would have otherwise continued in office.

Payment of members

10. A member of the Board shall be paid such remuneration, such allowances, and such travelling expenses, incurred in connection with his or her service on the Board, as the Minister may determine.

PART III – Meetings and Proceedings of the Board

Meetings of the Board

11. (1) Subject to the provisions of this Act, the Board shall regulate its own procedure.

(2) The Board shall meet as often as it is necessary or expedient for the discharge of its functions but so however that at least four ordinary meetings shall be held in each year, and such meetings shall be held at such place, time and day as the Chairperson may determine.

(3) All meetings of the Board shall be called by the Chairperson; and the Chairperson shall further call a special meeting of the Board within seven days of receipt of a request, in writing, of at least four members of the Board for such special meeting to be held.

(4) Four members of the Board shall constitute a quorum.

(5) At any meeting of the Board, the Chairperson shall preside, and in his or her absence the Vice Chairperson, in the absence of both the Chairperson and the Vice Chairperson, the members of the Board present shall elect, from among their number, a Chairperson and a Vice Chairperson for purposes of that meeting.

(6) The decisions of the Board shall be determined by a majority of the members of the Board present and voting, and, where the votes are equal, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(7) The Board may request the attendance of any person to act as advisor at any meeting of the Board, and that person, while so attending, shall have all the powers of a member of the Board, but his or her presence shall not count towards the constitution of a quorum and he or she shall have no right to vote.

(8) The validity of any decision or proceeding of the Board shall not be affected by —

(a) any defect in the appointment of a member of the Board; or

(b) any vacancy therein.

(9) The Chairperson shall cause minutes of each meeting of the Board to be kept, and such minutes shall be confirmed at a subsequent meeting of the Board.

12. (1) If at any meeting of the Board a member of the Board is aware or becomes aware that a matter which beneficially affects him or her directly or indirectly is to be discussed, he or she shall forthwith declare, to the Board, his or her interest in the matter and the Board may, if it considers it appropriate, require him or her to recuse himself or herself from the discussion on the matter.

Declaration of interest by Board members

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

(3) Where a member of the Board fails to disclose his or her interest in accordance with subsection (1), and a decision by the Board is made benefiting such member, such decision shall be null and void to the extent that it benefits such member.

(4) Any member of the Board who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine of not less than P5 000 but not more than P10 000.

13. All documents made by and all decisions of the Board may be signified under the hand of the Chairperson, or any member of the Board or senior officer of the Centre generally or specifically authorised in that behalf.

Signification of documents

PART IV – *Chief Executive and Staff of the Centre*

14. (1) The Centre shall have a Chief Executive who shall be appointed by the Minister, on the recommendation of the Board, for such fixed contract period not exceeding five years, as the Minister may determine.

Chief Executive

(2) A person shall not be appointed as the Chief Executive unless he or she possesses such experience and training as the Minister may prescribe or approve, and he or she has demonstrated that he or she is competent to carry out the functions of the Centre.

(3) The Chief Executive shall, subject to such directions on matters of policy as may be given by the Board, be responsible for the management, control and administration of the Centre, and the control of the employees of the Centre.

(4) The Chief Executive shall prepare a five year performance plan and an annual performance plan of the Centre and submit the plans to the Board for approval.

(5) The Chief Executive may delegate, to any senior officer of the Centre, the exercise of any power which he or she is authorised to exercise under this Act.

(6) The Chief Executive may resign from office by giving three months' notice thereof, in writing, to the Minister, or by paying, to the Centre, one month salary in lieu of notice.

(7) The Chief Executive may be removed from office by the Minister giving him or her three months' notice thereof, in writing, or by paying him or her three months' salary in lieu of notice.

(8) Notwithstanding the provisions of subsection (7), the Minister may, after consultation with the Board, remove the Chief Executive from office at any time, without giving notice, for —

(a) misconduct or incompetence; or

(b) such conflict of interest as, in the opinion of the Minister, warrants his or her removal from office.

15. (1) The Board shall, on consideration of any recommendation from the Chief Executive, appoint the senior officers of the Centre, and the Chief Executive shall appoint such other staff as may be necessary for the proper discharge of the functions of the Centre.

(2) The dismissal of all persons from positions designated by the Centre as held by senior officers shall be made by the Board, on consideration of any recommendation from the Chief Executive.

(3) The dismissal of all other staff shall be made by the Chief Executive or such other senior officer as he or she may delegate to perform that function.

(4) The terms and conditions of employment of staff of the Centre shall be as may be determined by the Board in their respective contracts of employment; and the said terms and conditions of employment may make provision for the payment, to such staff and their dependants, of such benefits, gratuities or other allowances as the Board may determine.

PART V – Functions, Powers and Duties of the Centre

16. (1) The Centre shall promote, encourage and facilitate export development and promote, attract, encourage and facilitate local and foreign investment promotion in Botswana and, without derogating from the generality of that objective, the functions of the Centre shall be to —

(a) undertake investment and export promotion missions within and outside the Southern African region;

(b) publish information relating to investment in, and exports from, Botswana;

(c) encourage expansions and new investments by existing investors in Botswana;

Appointment and conditions of service of staff of the Centre, etc.

General functions and powers of the Centre

- (d) identify partners in or outside Botswana for joint business ventures in Botswana;
- (e) provide monitory, advisory and courtesy services, including after-care services, to prospective investors and purchasers of Botswana goods and services;
- (f) recommend, to the Government, changes in the statutory and administrative framework relevant to the investment and export climate of Botswana, and to make representations against or regarding any changes to any such statutory or administrative framework;
- (g) acquire, purchase, sell, develop or otherwise deal with property, whether movable or immovable, including contracting for the construction of factory shells;
- (h) ensure that all aspects of the investment process in Botswana, including but not limited to the timely receipt of Government approvals, permits, grants, registrations and the fulfilment of any other regulatory authorisations, are facilitated;
- (i) gather intelligence and conduct research to sustain and enhance the competitiveness of Botswana;
- (j) maintain records and provide statistical reports to relevant stakeholders and the Government in respect of the activities, investors and purchasers of Botswana goods and services;
- (k) market the Centre, both within and outside Botswana;
- (l) provide for processes relating to the initial vetting of prospective investors;
- (m) initiate, manage and co-ordinate the branding, prescribed brand licencing procedures, marketing and promotion of the Botswana brand;
- (n) undertake branding activities within and outside Botswana;
- (o) maintain records and provide statistical reports to relevant stakeholders and the Government in respect of branding activities; and
- (p) liaise with relevant stakeholders, where necessary, in carrying out its functions.

(2) The Minister may, after consultation with the Board, give the Board directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the contractual or other legal obligations of the Centre, and the Board shall give effect to any such directions.

PART VI – *Financial Provisions*

17. (1) The Centre’s revenues shall consist of —

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Centre;
- (b) such grants and donations as it may receive;
- (c) such fees as it might charge for services rendered by itself, and
- (d) such income as it may receive from the rental or sale of land or buildings.

Centre’s
revenues

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

Financial year

18. The financial year of the Centre shall be the period of 12 months commencing on 1st April each year and ending on 31st March of the following year.

Accounts and audit

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

(2) The accounts of the Centre in respect of each financial year shall, within four months of the end thereof, be audited by such auditor as the Board may appoint.

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

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

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

General Fund

20. The Centre shall establish a General Fund —

- (a) into which all moneys received by the Centre shall be paid; and
- (b) out of which all payments required to be made by the Centre shall be effected.

Pension and other funds

21. (1) The Centre may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits, gratuities or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its staff, and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.

(2) The Centre may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

PART VII – *Miscellaneous*

22. No matter or thing done by any member of the Board or by any officer or employee of the Centre shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of this Act, render such person, or any person acting by his or her direction, personally liable to any action, claim or demand.

Protection
from personal
liability

23. The Chairperson shall, from time to time, submit to the Minister, reports with regard to matters relating to the activities of the Centre which, in the opinion of the Board, should be brought to the notice of the Minister.

Reports to
Minister

24. (1) The Centre shall, within a period of six months after the end of the financial year, submit, to the Minister, a comprehensive report on its operations during such year, together with a copy of the auditor's report and audited accounts, and the Centre shall publish them in such manner as the Minister may specify.

Annual report

(2) The Minister shall, within 30 days of receiving the Centre's report, lay such report before the National Assembly.

25. The Minister may make regulations —

Regulations

(a) for the better carrying out of the provisions of this Act; and

(b) prescribing anything that under this Act requires to be prescribed.

26. (1) Any decisions made and any other actions lawfully taken by the former entities, prior to the commencement of this Act, are hereby deemed to be decisions made and actions taken under this Act.

Savings

(2) Any rules made under section 21 (1) of the repealed Act shall, to the extent consistent with this Act, continue to apply and have effect.

(3) Any directions given by the Minister under section 16 (2) of the repealed Act shall, to the extent consistent with this Act, continue to apply and have effect.

27. (1) Upon the commencement of this Act, there shall be transferred to and vested in the Centre, by virtue of this Act and without further assurance, all property, rights, liabilities and obligations that, immediately before the commencement of this Act, were the property, rights, liabilities and obligations of the former entities.

Transitional
provisions

(2) Any pending legal proceedings which were instituted by or against the former entities, immediately before the commencement of this Act, shall be continued as if the Centre had been a party thereto in lieu of the former entities.

(3) All persons who were employees of the former entities shall be deemed to be employees of the Centre and shall continue in office for the period for which, and be subject to the conditions under which, they were appointed, as employees of the former entities.

(4) For the purposes of subsection (3), “conditions” means the remuneration and benefits relating to an employee and does not include an employee’s post or position.

(5) The Minister may, by Order published in the *Gazette*, make such transitional arrangements not otherwise provided for in this Act, as shall be necessary.

Repeal of
Cap. 74:08

28. The Botswana Export Development and Investment Authority Act is hereby repealed.

PASSED by the National Assembly this 27th day of July, 2011.

BARBARA N. DITHAPO,
Clerk of the National Assembly.