

# IMMIGRATION ACT, 2010

No. 3



of 2011

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### **An Act to provide for immigration procedures; procedures for the employment of non-citizens and for matters incidental thereto.**

*Date of Assent:* 24.01.2011

*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 Immigration Act, 2010 and shall come into operation on such a date as the Minister may, by order published in the *Gazette*, appoint.

2. In this Act, unless the context otherwise requires —
- “authorised officer” means a person appointed under section 3 to be an authorised officer for the purposes of this Act and includes an immigration officer;
- “Board” means the Immigrants Selection Board established under section 11;
- “certificate of exemption” means a certificate of exemption issued under section 32 or a duplicate of the certificate of exemption;
- “Commissioner” means any person holding the public office of Commissioner of Labour;
- “Director” means any person holding the public office of Director of Immigration;
- “employ” means, in relation to the person employing, to use as an employer the labour of an employee;
- “immigrant” means any person in Botswana other than a citizen of Botswana;
- “immigration consultant” means a person who facilitates the processing of residence permits and work permits for immigrants and is registered under section 39;
- “immigration officer” means a person appointed under section 3;
- “member” means a member of the Board;
- “non-citizen” means a person other than —
- (a) a citizen of Botswana; or
  - (b) a person or a member of a class of persons declared by order published in the *Gazette*, not to be a citizen for the purposes of this Act;
- “permit” means a —
- (a) residence permit issued under section 20; or
  - (b) work permit issued under section 22;
- “precincts of the airport” means the part of the airport at which customs and immigration formalities are conducted;
- “specified organisation” means any organisation which the Minister may by order published in the *Gazette*, prescribe for purposes of this Act; and
- “travel document” means a passport or other document of identity which satisfies such conditions as may be prescribed.
3. (1) The Minister may, in writing, appoint —
- (a) an immigration officer; and
  - (b) an authorised officer,
- to perform the duties set out under this Act.
- (2) A person appointed under subsection (1) shall act in accordance with such general directions as may be given by the Minister and such instructions as may be given by the Director or Commissioner.

## PART II – *Immigration procedures*

Point of entry

4. (1) A person entering Botswana shall —
- (a) enter through a point of entry specified by the Minister by order published in the *Gazette*; and
  - (b) on arrival at a point of entry, present himself or herself immediately to an immigration officer.
- (2) Subsection (1) shall not apply to any person who is —
- (a) authorised in writing by the Director; or
  - (b) a member of a class of persons authorised by the Minister by order published in the *Gazette*,

to enter Botswana subject to any condition to which the authority to enter Botswana without complying with this section was granted.

(3) It is no defence to a charge of contravening subsection (1) that the accused person was *bona fide* under a belief that he or she was not entering or had not entered Botswana.

(4) A person who fails to comply with this section commits an offence and is liable to a fine not-exceeding P10 000, or to imprisonment for a term not exceeding 10 years, or to both.

Examination  
of persons  
entering  
Botswana

5. (1) An immigration officer may require any person who has presented himself or herself in accordance with section 4 (1) (b) to submit to examination.

(2) Without prejudice to subsection (1), an immigration officer who suspects that a person is a prohibited immigrant or last entered Botswana in contravention of section 4 (1) may require that person to immediately submit to examination or to present himself or herself to an immigration officer at such place and within such period as the officer making the requirement shall specify.

(3) A person who is required to submit to examination or further examination may be examined by an immigration officer and shall answer truthfully and to the best of his or her knowledge every question put to him or her by the immigration officer for the purpose of ascertaining whether the person —

- (a) is or is not a prohibited immigrant; or
- (b) is liable to removal from Botswana under section 8.

(4) The immigration officer may require the person under examination to—

- (a) declare whether the person is or is not carrying or conveying or otherwise in possession of a travel document or other document of any description specified, which description appears to be relevant to any matter required to be ascertained under subsection (5);
- (b) produce any travel document or other document of a description prescribed by paragraph (a) which the person is carrying or conveying or otherwise has in his or her possession;
- (c) give such information relevant to any matter required to be ascertained under subsection (5);

- (d) complete truthfully any prescribed form; and
- (e) submit to examination by a medical practitioner named by the immigration officer for the purpose of ascertaining whether the person is or is not infected or afflicted with or suffering from any prescribed disease or physical infirmity which would render him or her a prohibited immigrant.

(5) The immigration officer may —

- (a) take or cause to be taken the photograph, fingerprints and palm prints of the person under examination; and
- (b) search or cause to be searched —
  - (i) the person under examination,
  - (ii) any luggage belonging to the person,
  - (iii) any luggage under his or her control, or
  - (iv) with the written authorisation of the Director, any dwelling-place occupied by such person, for the purpose of ascertaining whether the person is or is not carrying or in possession of a travel document.

(6) A female person shall be searched by a female immigration officer and where no female immigration officer is available, the search may be conducted by a female person designated for this purpose by the immigration officer.

(7) The immigration officer may, by notice in writing given to the person under examination, require that person to present himself or herself at such place and within such specified period for further examination.

(8) Where the person under examination is —

- (a) mentally or physically incapacitated; or
- (b) a minor;

the immigration officer may give the notice for further examination to a guardian accompanying such person.

(9) A person who —

- (a) fails to comply with any requirement under this section;
- (b) gives information which he or she knows to be false; or
- (c) obstructs any immigration officer in the exercise of a power conferred on him or her by subsection (4) (c),

commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 10 years, or to both.

6. (1) A police officer or traditional authority who suspects that a person is an illegal immigrant, may at any time require the person to present himself or herself to an immigration officer and submit to an examination.

(2) Notwithstanding the provision of subsection (1) and section 307 (1) of the Criminal Procedure and Evidence Act, a person who admits to being an illegal immigrant shall pay to a police officer, an admission of guilt fine of not less than P300 but not more than P10 000.

(3) A person who is required under this section to submit to examination shall be examined by an immigration officer in accordance with the provisions of section 5.

Examination of  
suspected  
illegal  
immigrant

Cap. 08:02

Examination  
of persons  
leaving  
Botswana

7. (1) A person leaving Botswana shall, unless such person is in direct transit through Botswana by air and does not leave the precincts of the airport, present himself or herself to an immigration officer for examination.

- (2) The immigration officer may require such person to —
- (a) produce his or her travel document and any permit issued to such person under this Act and to surrender any permit which has ceased to be valid;
  - (b) make and sign such declaration as may be prescribed; or
  - (c) answer in writing or otherwise, such questions relating to his or her identity or departure as may be asked by the immigration officer.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding 10 years, or to both.

Travel  
document to  
be produced

8. (1) Subject to subsection (2), any person being examined under section 5 who, on being required by an immigration officer to produce to the immigration officer any travel document in his or her possession, fails to produce a valid travel document or produces a document which the immigration officer is not satisfied is a valid travel document, shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer unless —

- (a) the person satisfies the immigration officer that he or she is a citizen of Botswana;
- (b) the person produces a valid residence permit and satisfies the immigration officer that he or she is the person to whom the residence permit has been issued; or
- (c) the Minister otherwise directs.

(2) This section shall not apply to —

- (a) an accompanying spouse where the name and description of the accompanying spouse are endorsed on a valid travel document carried by the spouse;
- (b) a child under the age of 16 years accompanying his or her parent where the child's name is endorsed on a valid travel document carried by the parent; or
- (c) any person who satisfies an immigration officer that the person is a member of any class of persons exempted by the Minister by an order, published in the *Gazette* from carrying a travel document when entering Botswana.

Powers of  
search

9. (1) For the purpose of exercising his or her powers and carrying out his or her duties under this Act, an authorised officer may —

- (a) without a search warrant enter and search any aircraft, vehicle, train or vessel in Botswana;
- (b) require the person in charge of an aircraft, any vehicle, any train or any vessel, arriving from any place outside Botswana to furnish a list of all persons in the aircraft, vehicle, train, or vessel, together with such other information as may be prescribed.

(2) A person who fails to comply with subsection (1) (b) commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for a term not exceeding 15 years, or to both.

**10. (1)** This Part shall not apply to any person who enters Botswana by air and makes an unbroken air journey through Botswana.

Application of  
Part II to air  
passengers

(2) Notwithstanding subsection (1), an immigration officer may require a person referred to under subsection (1), who lands in Botswana in the course of such air journey, to submit to examination in accordance with section 5 and this Act shall apply to such person.

### **PART III — *Establishment of Immigrants Selection Boards***

**11. (1)** There is hereby established an Immigrants Selection Board (hereinafter referred to as “a Board”), for such areas that the Minister shall, by order published in the *Gazette*, specify.

Establishment  
of Immigrants  
Selection  
Board

(2) A Board shall consist of —

- (a) the District Commissioner or District Officer for the area in which a Board is situated, who shall be the Chairperson;
- (b) the police officer in command of the police district in which a Board is situated, who shall be the Vice Chairperson;
- (c) a representative of the Director, who shall be the secretary to a Board;
- (d) a representative of the Commissioner;
- (e) the Town Clerk or the Council Secretary as appropriate, of the area where a Board is situated;
- (f) a representative of the Ministry responsible for Trade and Industry nominated by the Minister responsible for Trade and Industry;
- (g) a representative of the Tourism Industry nominated by the Minister responsible for Tourism; and
- (h) two members of the public from the area in which the Board operates with such expert knowledge or experience as may be necessary to assist the Board, appointed by the Minister.

(3) A Board may, where it considers it necessary, co-opt an additional member to the Board from any specified organisation in the area in which the Board operates with such expert knowledge or experience as may be necessary to assist the Board.

(4) Notwithstanding the provisions of subsection (1), the Minister may, where necessary, by order published in the *Gazette*, establish more than one Board for a specified area.

**12. A Board shall —**

- (a) issue permits in accordance with the provisions of this Act;
- (b) perform such other functions as may be conferred on it by regulations made under this Act.

Functions of  
Board

Disqualification,  
suspension  
and removal  
of member

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

- (a) has in terms of a law in force in any country —
  - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
  - (ii) made an assignment to, arrangement or composition with his or her creditors, which has not been rescinded or set aside;
- (b) has within the period of 10 years immediately preceding the date of his or her appointment, been convicted —
  - (i) of a criminal offence within Botswana, 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.

(2) The Ministers shall, in writing, suspend from a Board a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties of the Board or be entitled to any remuneration or allowance as a member.

(3) The Minister shall remove from a Board a member if the member —

- (a) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;
- (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect; or
- (c) has been convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.

(4) A member may resign from office by giving 30 days notice in writing to the Minister.

Meetings of  
Board

**14.** (1) A Board shall meet at least once in a month to discharge its functions.

(2) A meeting of a Board may be called by the Chairperson upon giving notice in writing of not less than seven days.

(3) Where the urgency of any particular matter does not allow the giving of notice in accordance with subsection (2), a special meeting may be called by giving a shorter notice.

(4) The Chairperson shall preside over meetings of a Board and if the Chairperson is absent from a meeting, the Vice-Chairperson shall preside over that meeting.

(5) Subject to subsection (6), the quorum at any meeting of a Board shall be the decision of the majority of members present and voting.

(6) For the purpose of determining an application placed before it, no quorum of a Board shall be constituted unless two of the members present are a representative of the Director and a representative of the Commissioner.

(7) The decisions of a Board shall be by a simple majority of votes, and in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(8) Subject to the provisions of this Act, a Board shall regulate its own proceedings.

15. (1) Where a member is present at a meeting of a Board, at which meeting a matter which is the subject of consideration is one in which he or she is directly or indirectly interested in a private capacity, the member shall, immediately upon the commencement of the meeting, disclose such interest and shall not, take part in any consideration or discussion of, or vote on any question concerning that matter.

Disclosure of interest

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

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

(4) A member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P25 000, or to imprisonment for a term not exceeding 12 years, or to both.

16. (1) A member shall observe and preserve the confidentiality of matters coming before a Board, and such confidentiality shall subsist even after the termination of the term of his or her office.

Confidentiality

(2) Any person who contravenes this section commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

17. A member shall be paid such remuneration and allowances, in connection with his or her service to a Board, if any, as the Minister may determine.

Remuneration

#### PART IV – *Permits*

18. A person shall not remain in Botswana unless the person is —

Right to remain in Botswana

- (a) a citizen of Botswana;
- (b) in possession of a valid visitor's permit;
- (c) in possession of a valid residence permit;
- (d) a member of any class of persons exempted by the Minister under section 32 from obtaining a residence permit in order to reside in Botswana; or
- (e) entitled to immunity from suit under the Diplomatic Immunities and Privileges Act.

19. (1) A non-citizen may remain in Botswana for a period of not more than 90 days as may be specified in a visitor's permit, issued to the non-citizen by an immigration officer signed by that officer.

Cap. 39:01  
Visitor's permit

(2) A visitor's permit shall be in such form as may be prescribed.

(3) A non-citizen who is issued with a visitor's permit shall not remain in Botswana for more than 90 days in aggregate in any one year unless he or she is authorised by the Director in writing to do so.

(4) The Minister may by —

(a) notice in writing given to a non-citizen; or

(b) order published in the *Gazette* applying to non-citizens of any specified class, prescribe conditions to which a non-citizen, or a non-citizen of that class, as the case may be, shall while he or she remains in Botswana, comply with and may in like manner, revoke or vary any prescribed conditions for the time being in force.

(5) Where a non-citizen to whom notice in writing is to be given under subsection (4) is —

(a) mentally or physically incapacitated; or

(b) a minor,

the immigration officer may give notice under subsection (4) to a guardian accompanying such person.

(6) Without prejudice to subsection (3), a visitor's permit may be issued subject to such conditions as the immigration officer issuing it may determine, which conditions shall be specified in the permit.

(7) A non-citizen who fails to comply with any conditions specified in his or her visitor's permit commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

Residence  
permit

20. (1) Subject to the provisions of section 18, a non-citizen shall not reside in Botswana unless the non-citizen is the holder of a —

(a) residence permit issued to him or her under this Act permitting the non-citizen to reside in Botswana in accordance with the conditions attached to the permit; or

(b) certificate of exemption issued to him or her under section 32.

(2) A non-citizen who fails to comply with any conditions specified in his or her residence permit commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

Overstaying

21. A non-citizen who remains in Botswana beyond the time limited by a permit issued to such non-citizen under this Act without reasonable cause —

(a) commits an offence and is liable to a fine of P100 for every day during which the offence continues, which fine shall not exceed P1 000, or to imprisonment for a term not less than one month but not more than one year, or to both; and

(b) may be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer, and sections 44 (1) and 45 shall have effect in relation to such non-citizen.

Work permit

22. (1) A non-citizen shall not engage in any occupation for reward or profit unless he or she is the holder of a —

(a) work permit issued to him or her, permitting the non-citizen to be employed, and he or she is employed or engaged in accordance with the conditions, attached to the permit; or

(b) certificate of exemption issued to him or her under section 32.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

(3) A person shall not employ a non-citizen unless the non-citizen is the holder of a —

(a) work permit issued to him or her under subsection (1) permitting him or her to be employed and he or she is employed in accordance with the conditions, attached to the permit; or

(b) a certificate of exemption issued to him or her under section 32.

(4) A person who contravenes subsection (3) commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding five years, or to both.

(5) Where, in any proceedings for an offence under this section, it is alleged in the charge that an accused or any other person was at a time specified a non-citizen, the court shall presume that the person was at that time a non-citizen unless the contrary is proved.

**23.** (1) An application for a permit shall be lodged with an authorised officer, in the prescribed form and accompanied by such fee as may be prescribed.

Application  
for permit

(2) An authorised officer shall assess an application and endorse his or her recommendations on the application and transmit it to a Board.

(3) For the purpose of making his or her recommendations in accordance with subsection (2), the authorised officer may require any person to submit immediately to examination or to present himself or herself to the authorised officer at such time and place as shall be specified, and at that time and place submit to examination.

(4) A person who has been required to submit to examination shall answer truthfully and to the best of his or her knowledge, every question put to him or her for the purpose of making the required recommendation.

(5) A Board shall consider every application for a permit put before it and it shall either issue a permit or reject the application, in which case the authorised officer shall inform the applicant of the decision of the Board in writing, without stating the reasons for such a decision.

(6) For the purpose of considering and determining an application for a permit, a Board may call for and obtain such additional information relating to the applicant, including his or her fingerprints and palm prints, as it may be necessary to have.

(7) In determining an application for a permit, a Board shall have primary regard to the interests of Botswana and shall take into account the character of the applicant and whether —

(a) in the case of an applicant who proposes to take up employment or engage for reward in any business, profession or other occupation in Botswana, he or she has or has not the qualifications, education, training and experience likely to render him or her efficient in that employment, business, profession or occupation and sufficient prospects of obtaining that employment or sufficient capital to engage in that business, profession or occupation, as the case may be;

- (b) in the case of any other applicant, he or she is or is not in a position to support himself or herself and any dependants in Botswana otherwise than by taking up employment or engaging for reward in any business, profession or other occupation;
  - (c) the issuance of a permit affects the opportunities for employment or for other engagement for reward or profit in the occupation in question, as the case may be open to citizens of Botswana; or
  - (d) in the case where the application relates to employment, the arrangements made or to be made by the employer to train a citizen of Botswana to replace the person in respect of whom the application is made in the event of a work permit being issued.
- (8) In the case of an application for a residence permit by —
- (a) a spouse or a child under the age of 18 years; or
  - (b) the aged parent or grandparent of a holder of a permit who the holder of a permit has undertaken to maintain,
- a Board shall not be required to take into account the matters prescribed by subsection (7).
- (9) The Minister may direct in writing, either generally or with reference to a particular application for a permit, to a Board that the interests of Botswana include such matters as the Minister shall specify and the interests of Botswana shall be deemed, for the purposes of subsection (7), to include those matters either in respect of applications or in respect of the particular application in question, as the case may be.
- (10) A permit shall be issued in the prescribed form for such period —
- (a) not exceeding five years for employees; or
  - (b) not exceeding 10 years for investors, and may be issued subject to such conditions as a Board may determine, which conditions shall be specified in the permit.
- (11) A person whose application for a permit is rejected by a Board shall not lodge a further application with the Board before the expiry of 12 months immediately after the date of the Board's rejection, unless the Minister authorises an earlier application.

Appeal to  
Minister

Procedure for  
appeal

**24.** A person aggrieved by a decision of a Board rejecting his or her application for a permit may appeal to the Minister.

**25.** (1) A person aggrieved by the decision of a Board shall lodge with the Minister, in such form, and upon payment of such fee as may be prescribed, an appeal, no later than 30 days after the day on which the decision complained of was communicated to such person.

(2) In determining the appeal, the Minister shall have regard to the following factors —

- (a) security considerations;
- (b) non availability of suitable skills in the market;
- (c) authenticity of information and documents supplied;
- (d) character of the appellant;
- (e) commitment to implement localisation plans;
- (f) proof of investment capital; and
- (g) proof of employment offer.

(3) Where the Minister allows an appeal, the Board shall issue a permit to the appellant subject to such conditions as shall be specified in the permit.

**26.** (1) Notwithstanding the provisions of section 12, where the Commissioner is of the opinion that an emergency exists which requires the immediate employment or engagement in an occupation for reward or profit of a non-citizen, the commissioner shall notify the Director who shall issue a residence permit, in the prescribed form for a specified period and subject to such conditions as may be specified in the permit.

Power of Director to issue residence Permit

(2) The Director may, in writing, delegate to a person holding or acting in the office designated by the Director, the exercise of any power conferred by subsection (1) subject to such conditions, as the Director may specify.

(3) A person who fails to comply with any conditions specified in a residence permit issued under this section commits an offence and is liable to the penalties prescribed under section 20 (2).

(4) A person aggrieved by a decision of rejection of his or her application for a residence permit may appeal to the Minister.

**27.** (1) Notwithstanding the provisions of section 12, where the Commissioner is of the opinion that an emergency exists which requires the immediate employment or engagement in an occupation for reward or profit of a non-citizen, he or she may issue a work permit, in the prescribed form for a specified period and subject to such conditions as he or she may think fit to that non-citizen.

Power of Commissioner to issue work permit

(2) The Commissioner may, in writing, delegate to a person holding or acting in the office designated by the Commissioner, the exercise of any power conferred by subsection (1), subject to such conditions, as the Commissioner may specify.

(3) A person who fails to comply with any conditions specified in a work permit issued under this section commits an offence and is liable to the penalties prescribed under section 22 (2).

**28.** (1) A non-citizen who has resided lawfully in Botswana for at least five years may apply in the prescribed manner for a permanent residence permit.

Permanent residence permit

(2) Where the Minister is satisfied that a non-citizen who has resided lawfully in Botswana for at least five years —

- (a) is of good character;
- (b) has made significant contributions of benefit to Botswana;
- (c) is of good standing in society; or
- (d) has sufficient means to support himself or herself,

the Minister may in the prescribed form, confer on such person the status of permanent residence subject to such conditions as the Minister considers necessary, exempting the person from the requirement of applying for a residence permit.

(3) The Minister may withdraw the status of permanent residence, without giving any reasons for the withdrawal.

Renewal of  
permit

(1) Where the holder of a permit has not become a citizen of Botswana, a Board may renew a permit —

- (a) in the case of employees, after five years; or
- (b) in the case of investors, after 10 years.

(2) An application for a renewal of permit shall be lodged with an authorised officer, in the prescribed form.

(3) An authorised officer shall assess an application for renewal and endorse his or her recommendations on the application and transmit it to a Board.

(4) Where a Board decides not to renew a permit, the Board shall give the holder of the permit notice in writing that the holder shall wind up his or her affairs in Botswana within one year.

(5) Where a Board decides to renew a permit, the holder of that permit shall pay the prescribed fee.

(6) A person aggrieved by a decision of a Board not to renew his or her permit, may appeal against the decision to the Minister.

Cancellation  
of permit

**30.** (1) The Minister may cancel a permit where —

(a) the holder of the permit —

- (i) does not take up residence in Botswana within six months of the date of issue of a permit,
- (ii) absents himself or herself from Botswana for a continuous period of more than six months,
- (iii) or his or her agent, is convicted of any offence under this Act in connection with an application for the issue or renewal of a permit,
- (iv) is convicted of an offence under section 20 (2) and section 22 (4),
- (v) violates the conditions of a permit issued under this Act,
- (vi) having attained the age of 18 years, is convicted of any other offence punishable with imprisonment and the court by which the person is convicted, or any court to which his or her case is brought by way of appeal against conviction or sentence, recommends that the permit be cancelled; or

(b) the Minister is satisfied that the object for which the permit was issued or renewed has been completed or no longer exists, or that it is no longer in the interest of Botswana that the holder should have such a permit.

(2) Where a person convicted of an offence by any court is committed for sentence by any other court, the power to make a recommendation under subsection (1) (a) (vi) shall be exercisable by the court to which such person is committed and not by the court which he or she is convicted.

(3) For the purpose of any law relating to appeals in criminal cases, a recommendation under subsection (1) (a) (vi) shall be treated as an order made on conviction and the validity of such recommendation shall not be called in question except on an appeal against the recommendation or against the conviction upon which it is made.

(4) Where a permit is cancelled under subsection (1), the Minister shall cause written notice of the cancellation to be served on the holder of the permit and in the notice shall state the period that is to elapse after such service before the cancellation takes effect and shall require the person served with the notice if he or she is still within Botswana, to leave Botswana on the cancellation taking effect.

(5) Where it is not practicable to serve such written notice on the holder of the permit by reason of the absence of such holder from Botswana or because the holder cannot be found, the notice shall be deemed to be duly served if published in such manner as the Minister may direct.

(6) Where any person who is required to leave Botswana under subsection (4) fails to do so without reasonable excuse, proof of which shall lie upon such person, he or she shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer, and sections 44 (1) and 45 shall have effect in relation to such person as they have in relation to a prohibited immigrant.

(7) Where the holder of a permit is removed from Botswana as a prohibited immigrant, his or her permit shall be deemed to be cancelled with effect from the date of departure from Botswana.

31. (1) The Minister may, by order published in the *Gazette*, exempt any class of persons specified in the order, subject to such conditions, if any, from obtaining a permit in order to reside in Botswana or work in Botswana.

Exemption  
order

(2) The Minister may, where necessary, consult specified organisations before issuing an exemption order under subsection (1).

32. (1) A person who is specified in an order under section 31, shall lodge an application for a certificate of exemption with the Director or Commissioner, on the payment of prescribed fee, in such form and manner as the Minister may require.

Application  
for certificate  
of exemption

(2) The Director or Commissioner shall consider an application lodged with him or her and shall either issue a certificate of exemption, if satisfied that the person in respect of whom the application is made is a person or member of a class of persons specified in an order under section 31, or reject the application, if not so satisfied, in which last case he or she shall inform the applicant in writing of his or her decision.

(3) The Director or Commissioner may in considering an application lodged with him or her in accordance with subsection (2), call for or obtains such additional information relating to the application as he or she thinks is necessary.

(4) A certificate of exemption shall be issued in such form as the Minister may prescribe.

(5) A person who furnishes any information which he or she knows to be false in order to obtain a certificate of exemption commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

Appeals  
against  
rejection to  
issue  
certificate of  
exemption

**33. (1)** An applicant for a certificate of exemption who is aggrieved by a decision to reject his or her application may appeal against that decision to the Minister.

(2) An appeal under this section shall be lodged, in such form and manner as the Minister may require together with the prescribed fee, with the Minister not later than 30 days after the day on which the decision complained of was communicated to such person.

(3) The Minister shall consider every appeal lodged with him or her in accordance with subsection (2) and shall either dismiss the appeal or allow it, and where the Minister allows the appeal, the Director or Commissioner shall issue a certificate of exemption.

Replacement  
of permit

**34. (1)** Where the holder of a permit or of a certificate of exemption which has been lost, destroyed, damaged or defaced wishes to replace the same, he or she shall lodge an application for a duplicate, with the authorised officer in such form and manner as the Minister may require together with the prescribed fee, and the permit or certificate of exemption, unless it has been lost or destroyed.

(2) An authorised officer shall consider an application lodged with him or her in accordance with subsection (1) and shall, if he or she is satisfied that the permit or certificate of exemption has been lost, destroyed, damaged or defaced, issue a duplicate to the applicant.

(3) An authorised officer shall dispose of every permit or of a certificate of exemption lodged with him or her in accordance with subsection (1) in such manner as the Minister may direct.

Return of  
permit

**35. (1)** Where the holder of a permit or of a certificate of exemption is about to leave Botswana, he or she shall, not less than 14 days immediately before the day of his or her proposed departure from Botswana, transmit the permit or certificate of exemption to an authorised officer who shall dispose of the same in such manner as the Minister may direct.

(2) The holder of a permit or of a certificate of exemption who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding one year, or to both.

Registers

**36. (1)** The Director or an officer authorised in writing, shall keep —  
(a) at his or her office a register in respect of residence permits; or  
(b) at his or her office a register in respect of certificates of exemption, issued under this Act.

(2) The Commissioner or an officer authorised in writing, shall keep —  
(a) at his or her office a register in respect of work permits; or  
(b) at his or her office a register in respect of certificates of exemption, issued under this Act.

(3) A register required to be kept under this section shall be in such form as may be prescribed and the Director, Commissioner or an authorised officer, shall enter or cause to be entered such particulars as may be prescribed.

**37. (1)** The holder of a permit or of a certificate of exemption, shall at all times endeavor to keep the permit or certificate of exemption safe and in an undamaged and undefaced condition.

Safe keeping  
of permit

**(2)** A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding one year, or to both.

**38. (1)** An authorised officer may require the holder of a permit or of a certificate of exemption, to produce the permit or the certificate of exemption for examination at such time and place as the authorised officer making the requirement may specify.

Inspection of  
permit

**(2)** A person who, without reasonable excuse fails to comply with a requirement under subsection (1) commits an offence and is liable to a fine not exceeding P 1 000, or to imprisonment for a term not exceeding one year, or to both.

**39. (1)** A person shall not operate as an immigration consultant unless such person is registered under this Act.

Registration  
of  
immigration  
consultant

**(2)** The Minister may prescribe the conditions and any fees payable for the registration of immigration consultants.

**(3)** A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding five years, or to both.

**40. (1)** A person who employs, during any period of 12 months ending on 1st January, the holder of a work permit or of a certificate of exemption shall, within 15 days immediately after the expiry of the period, furnish the Commissioner a return for the period in such form and containing such particulars as the Minister shall prescribe.

Submission  
of returns

**(2)** A person who contravenes this section commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding one year, or to both.

## PART V — *Prohibited immigrants*

**41. (1)** A person is a prohibited immigrant and his or her entry into or presence within Botswana is unlawful if he or she —

Prohibited  
immigrants

**(a)** is an immigrant who not having received a free pardon, has been sentenced to imprisonment without the option of a fine in Botswana, or

**(b)** has been sentenced to imprisonment without the option of a fine in any other country for an offence which, if committed in Botswana, would be punishable with imprisonment without the option of a fine;

**(c)** is a person who, in consequence of information received from a reliable source, is declared by the President to be a prohibited immigrant; or

(d) is an immigrant who is convicted of an offence punishable with imprisonment and the court before which such person is convicted, or any court to which his or her case is brought, by way of appeal against conviction or sentence recommends to the President that the person be declared a prohibited immigrant.

(2) An order to declare a person a prohibited immigrant under subsection (1) shall be made in writing under the hand of the President, and the President shall cause the order to be served on the person to whom it relates.

(3) The President may, by order published in the *Gazette*, prohibit the entry into Botswana of a non-citizen who —

(a) is named in such order; or

(b) is of a class or description of persons, specified in such order, if in the President's opinion the presence within Botswana of such non-citizen, or a non-citizen of such class or description, as the case may be, would endanger the peace or security of Botswana.

(4) A person named in an order made under subsection (1), or of a class or description specified in such order, who enters Botswana, except in accordance with an exemption given under section 46, may be arrested without a warrant and liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

(5) A court shall not question the adequacy of the grounds for declaring any person a prohibited immigrant under subsection (2) and an appeal shall not lie against an order issued under subsection (2).

(6) Notwithstanding the provisions of subsection (1), a person who is entitled to immunity from suit under the Diplomatic Immunities and Privileges Act, shall not be a prohibited immigrant for the purposes of this Act.

42. A prohibited immigrant shall not enter or remain in Botswana and, subject to this Act, any immigration officer shall cause any prohibited immigrant entering or found within Botswana to be removed from Botswana.

43. (1) A person suspected of being a prohibited immigrant may be detained by an immigration officer for such reasonable period, not exceeding 14 days, as may be required for the purpose of making inquiries as to such person's identity.

(2) An immigration officer who detains any person under subsection (1) shall, as soon as practicable, within a period of 7 days, report such detention to the Minister.

(3) Where any person suspected of being a prohibited immigrant by reason of section 41 (1) (a), (b) or (c) has been detained under subsection (1), and the Minister considers that further time is required for the completion of the inquiries, the Minister may, by order, direct that the person shall be detained for a further period, not exceeding 14 days at a time.

(4) A person may be detained in the nearest convenient prison, unless with the consent of the Minister, the person or such sureties as may be approved by the Director enters into a bond for an amount approved by the Director and deposits such sum, if any, as may be fixed by the Director to satisfy any judgment which may be given on the bond.

Cap. 39:01  
Exclusion of  
prohibited  
immigrant

Detention of  
suspected  
prohibited  
immigrant

(5) A person shall appear within such period and before such person as may be described in the bond and shall report himself or herself to an immigration officer at such times as may be fixed in the bond and the bond may contain such other conditions as the Director sees fit to impose.

(6) Where a person breaches any condition of the bond a court may, upon application by the Director, give judgment against such person or the person's sureties in accordance with the conditions of the bond, and such person may be arrested and detained in the nearest convenient prison until investigations have been completed.

(7) A person detained under this section and not serving a sentence of imprisonment shall be treated as a person awaiting trial.

**44. (1)** Where an order to declare a person a prohibited immigrant is issued under section 41, a prohibited immigrant shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer.

Removal of prohibited immigrant

(2) A prohibited immigrant who is serving a sentence of imprisonment for committing any offence may, if the President so directs, be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer and such sentence shall be deemed to have expired with effect from such person's departure from Botswana.

**45. (1)** A person who is liable to be removed from Botswana under this Act may be detained in the nearest convenient prison by an immigration officer for such period as may be necessary for the completion of arrangements for his or her removal.

Detention pending removal

(2) A person detained under subsection (1) and not serving a sentence of imprisonment shall be treated as a person awaiting trial.

**46. (1)** Where any person is a prohibited immigrant under this Act, the President may, in writing, direct that such person shall cease to be a prohibited immigrant for such period and subject to such conditions as may be specified.

Exemption of prohibited immigrant

(2) The President may, in writing, cancel any direction issued under subsection (1) and on such cancellation the person in respect of whom the direction was made shall not be a prohibited immigrant.

**47.** A person who re-enters Botswana whilst a prohibited immigrant and who has been removed from or required to leave Botswana, commits an offence and is liable to a fine not exceeding P10 000, or to imprisonment for a term not exceeding 10 years, or to both.

Re-entry of prohibited immigrant

**48. (1)** A person shall not have the right to be heard before or after a decision is made by the President in relation to that person under this Act.

Exercise of discretionary powers by President

(2) A person affected by any decision made under subsection (1) shall not have the right to demand any information as to the grounds of such decision nor shall any such information be disclosed in any court.

**49.** The President may, by order served on an immigrant, or by order published in the *Gazette* directed to immigrants of a specified class, impose such special restrictions as to residence, reporting to the police, occupation or employment as he or she may consider necessary in the public interest.

Restrictions on immigrants

## PART VI — *Undesirable immigrants*

Undesirable  
immigrants

**50.** (1) A person is an undesirable immigrant and his or her entry into or presence within Botswana is unlawful if he or she —

- (a) is likely to become a public charge by reason of mental or physical incapacity;
- (b) does not have sufficient means to support himself or herself and any dependant that he or she proposes to bring with him or her into Botswana;
- (c) is a spouse or a child under the age 18 years of a prohibited immigrant who does not have sufficient means to support himself or herself or a dependant of a prohibited immigrant;
- (d) is a person who is infected with or suffering from a prescribed disease, unless the person has the written authority with or without conditions, of an immigration officer to enter and remain in Botswana; or
- (e) is a prostitute, or a person, who lives or has lived or knowingly receives or has received any part of the earnings of prostitution, or has procured another person for immoral purposes.

(2) The Minister may issue a deportation order where he or she is satisfied that a person is an undesirable immigrant.

(3) If on the expiration of the period in a deportation order the immigrant in respect of whom the order was made has not left Botswana, the person shall be removed from Botswana by an immigration officer or by a police officer acting under the authority of an immigration officer and sections 44 (1) and 45 shall have effect in relation to such a person as they have in relation to a prohibited immigrant.

Notice to  
undesirable  
immigrant

**51.** (1) Where an immigration officer determines that a person is an undesirable immigrant, the immigration officer shall notify that person of the decision in the prescribed form.

(2) Notice issued under subsection (1) shall contain the grounds for declaring that person an undesirable immigrant.

Appeal by  
undesirable  
immigrant

**52.** (1) A person to whom notice is given under section 51 may appeal to a magistrate's court and such appeal shall be noted within 3 days after such notice has been given.

(2) A person shall not be removed from Botswana pending the hearing of such an appeal, but the provisions of section 45 shall apply in relation to that person as if he or she was being removed.

(3) A magistrate's court may, of its own motion or at the request of the appellant or of an immigration officer, reserve for the decision of a judge of the High Court any question of law which arises upon an appeal heard before such magistrate's court, and shall state the question in the form of a special case for the opinion of the court by transmitting the special case to the Registrar of the High Court.

(4) A question stated in the manner described in subsection (3) may be heard and argued before a judge of the High Court at any convenient time, and that judge may call for further information to be supplied by the magistrate, if he or she deems such information necessary, and may give such answer on the case, supplemented by the costs of the proceedings, as he or she may think fit.

## PART VII — *Miscellaneous provisions*

**53.** (1) Where a person being removed from Botswana under this Act arrived in Botswana by air, an immigration officer, subject to subsection (2), may direct the —

Removal of persons arriving by air

- (a) commander of the aircraft in which that person arrived in Botswana, to remove that person from Botswana in that aircraft;
- (b) owners or agents of the said aircraft, to remove that person from Botswana in any aircraft specified in the directions, being an aircraft of which they are the owners or agents; or
- (c) owners or agents to make arrangements for the removal of that person from Botswana in any aircraft bound for a country specified in the directions, being either —
  - (i) a country of which that person is a national or in which he or she embarked for Botswana, or
  - (ii) a country to which there is reason to believe that person will be admitted.

(2) An immigration officer shall not give directions under subsection (1) in respect of any person after the expiration of two months from the date on which the person last arrived in Botswana.

(3) A person in respect of whom directions are given under subsection (1) may be placed by an immigration officer on board any aircraft in which he or she is to be removed from Botswana in accordance with the directions.

(4) A person who fails to comply with any directions given under subsection (1) commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding one year, or to both.

**54.** (1) A person who —

Aiding and abetting unlawful entry

- (a) unlawfully aids or abets a person whose entry into or presence within Botswana is contrary to this Act to enter or remain within Botswana;
- (b) unlawfully aids or abets a person who is being removed from or has been required to leave Botswana in terms of this Act to evade leaving Botswana; or
- (c) harbours a person who is being removed from or has been required to leave Botswana in terms of this Act, commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

(2) An immigration officer who suspects, on reasonable grounds, that a person has committed an offence under subsection (1) may require that person immediately to submit to examination or to present himself or herself to an immigration officer at a specified place.

(3) Without prejudice to his or her powers of arrest without a warrant, a police officer who suspects, on reasonable grounds, that a person has committed an offence under subsection (1) may require that person to present himself or herself to an immigration officer and submit to examination.

(4) Notwithstanding the provision of subsection (1) and section 307 (1) of the Criminal Procedure and Evidence Act, a person who admits to have committed an offence under subsection (1) shall pay to a police officer, an admission of guilt fine of not less than P300 but not more than P1 000.

(5) A person who has been required under this section to submit to examination may be examined by an immigration officer and shall answer truthfully and to the best of such person's knowledge every question put to him or her by that officer for the purpose of ascertaining whether the person has committed an offence under subsection (1) and for the purpose of discovering the circumstances of any offence which may have been committed under that subsection.

(6) A person who contravenes this section or fails to comply with any requirement made of such person under this section commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

**55.** (1) A person who, for the purpose of entering Botswana or remaining in Botswana —

(a) makes a statement, either verbally or in writing, that he or she is required to make under this Act, or in declaration on a prescribed form; or

(b) made a statement on oath or in the form of an affidavit in a country outside Botswana for a similar purpose in such country, that contradicts in a material particular a previous statement made by such person, commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding one year, or to both.

(2) Where a person is tried for an offence under this section, it shall not be necessary to prove the falsity of either of the statements, but upon proof that both the statements were made by him or her, the court shall, subject to subsection (3), convict the accused person.

(3) Where a person is tried for an offence under this section, it shall be a defence for the accused person to prove to the court that the conflicting statements were not made with the intention of deceiving or misleading anyone in Botswana.

Contradictory  
statements

(4) Where a person is tried for an offence under this section, the production of a statement in writing or in a prescribed form, or in an affidavit, as the case may be, purporting to be signed by the accused person is sufficient evidence that such statement or affidavit was made by such accused person, unless the contrary is proved.

**56.** (1) A person who —

Offences

(a) for the purposes of entering Botswana or remaining in Botswana in contravention of this Act or any other law or of assisting any other person so to enter or remain —

(i) makes a false statement verbally or in writing,

(ii) forges any certificate or document, other than any document mentioned in subsection (2), or who uses any such certificate or document knowing it to be forged, or

(iii) utters or uses any certificate or document other than any document mentioned in subsection (2), which has not been issued by a lawful authority or which the person is not entitled to use; or

(b) hinders or obstructs an authorised officer in the execution of his or her duties under this Act, commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding one year, or to both.

(2) A person who —

(a) is in unlawful possession of or makes use of any permit, passport or other travel document belonging to another;

(b) delivers his or her permit, passport or other travel document to any other person for unlawful use by such other person; or

(c) forges or unlawfully alters any permit, passport or other travel document, commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding one year, or to both.

**57.** In any proceedings for an offence under this Act an ingredient of which is the absence of a reasonable excuse, the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

Evidential  
presumption as  
to reasonable  
excuse

**58.** (1) The Immigration Act is hereby repealed.

Repeal of  
Cap. 25:02  
and Cap. 47:02

(2) The Employment of Non-Citizens Act is hereby repealed.

**59.** (1) Notwithstanding the repeal of the Immigration Act and the Employment of Non-Citizens Act, any subsidiary legislation made under the Acts, in force immediately prior to the commencement of this Act shall in so far as they are not inconsistent with the provisions of this Act, and until they are revoked, continue to be in force as if made under this Act.

Savings

(2) A permit or certificate of exemption or any document issued under the Immigration Act and the Employment of Non-Citizens Act shall remain valid until its expiry date whereupon the person issued with the permit or certificate of exemption or any document shall apply under this Act for a permit or certificate of exemption or any document.

**60.** The Minister may make, regulations for the better carrying out of the provisions of this Act and such regulations may provide for —

- (a) any matter under this Act that is required to be prescribed;
- (b) the powers and duties of authorised officers;
- (c) the points of entry and the times, places and conduct of examination, medical or otherwise, of persons entering or desiring to enter Botswana or who are suspected of being prohibited immigrants or of having last entered Botswana in contravention of section 4 or of having committed an offence under this Act;
- (d) the procedure to be followed by persons entering or leaving Botswana;
- (e) the steps to be taken to prevent entrance into Botswana of prohibited immigrants or of any person in contravention of this Act;
- (f) the issue of and other matters connected with certificates of exemption;
- (g) the issue of visas;
- (h) the procedure for and the manner of detention of persons being removed from Botswana, and the procedure for and the manner of such removal;
- (i) the application in or towards payment of the expenses of or incidental to the detention, maintenance, medical treatment or removal from Botswana of any person being removed from Botswana and his or her dependants, if any, of money or other property belonging to that person;
- (j) the statistics to be kept of persons deported from Botswana;
- (k) forms to be used for purposes of this Act;
- (l) fees to be paid under this Act; or
- (m) procedure for registering immigration consultants under section 39.

PASSED by the National Assembly this 17th day of December, 2010.

B.N. DITHAPO,  
*Clerk of the National Assembly.*