

SOCIETIES (AMENDMENT) ACT, 2015

No. 9



of 2015

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Societies Act.

Date of Assent: 04.05.15

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Societies (Amendment) Act, 2014, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title
and
commencement

2. The Societies Act (hereinafter referred to as “the Act”) is amended by deleting the word “local” wherever it appears.

General
amendment
of Cap. 18:01

3. The Act is amended in section 3 by —

- (a) deleting the definition of “local society”;
- (b) inserting in their correct alphabetical order, the following new definitions —
 - (i) ““Council” means the Advisory and Arbitration Council established under section 31; ,
 - (ii) “faith based organization” means a system of religious beliefs expressed in a particular system of faith and worship; , and

Amendment
of section 3
of the Act

- (iii) “person” for purposes of membership of a society means an individual who has reached the age of majority, and includes a registered society;”;
- (c) substituting for the definition of the word “office-bearer”, the following new definition —
 ““office-bearer” of a society means any elected, appointed, or co-opted person who is a member of the board, committee or governing body thereof;”;
- (d) substituting for the definition of the word “society”, the following new definition —
 ““society” includes —
 - (a) any association of 150 or more persons, formed for religious purposes; and
 - (b) any club, company, partnership or association of 20 or more persons, whatever its nature or objects, but does not include —
 - (i) any company as defined by the Companies Act, or any company to which Part XXIV of that Act applies which has complied with the requirements of section 345 of that Act,
 - (ii) any company or association constituted under any other written law for the time being in force in Botswana,
 - (iii) any trade union, federation of trade unions or employers’ organization registered under the Trade Unions and Employers’ Organizations Act,
 - (iv) any club, company, partnership or association consisting of not more than 30 persons, formed for the sole purpose of carrying on any lawful business,
 - (v) any co-operative society, registered under the Co-operative Societies Act,
 - (vi) any board of governors, local education authority, school committee or similar organization established under the Education Act,
 - (vii) any building society registered under the Building Societies Act,
 - (viii) any political party listed in the Schedule, or
 - (ix) any society or class of society which may be declared not to be a society for the purposes of this Act.”.

Cap. 42:01

Cap. 48:01

Cap. 42:04

Cap. 58:01

Cap. 42:03

Amendment of section 5 of the Act

4. The Act is amended by substituting for section 5, the following new section —

“Societies deemed to be established in Botswana

5. (1) A society shall be deemed to be established in Botswana although it is organized and has its headquarters or chief place of business outside Botswana, if at least two thirds of its office-bearers are Batswana and reside in Botswana.

(2) A society shall not be deemed to be established in terms of subsection (1), if —

- (a) it is organized and is operating wholly outside Botswana;
- (b) no office, place of business or place of meeting is maintained or used in Botswana by such society or by any person on its behalf;
- (c) no register of any of the members of such society is kept in Botswana; and
- (d) no subscriptions are collected or solicited in Botswana by the society or by any person on its behalf.”.

5. The Act is amended by substituting for section 6, the following new section —

“Application for registration or exemption from registration of societies

6. (1) A society shall, in the manner prescribed and within 28 days of its formation, or of the adoption of its constitution, or of its rules, regulations or bye-laws, make an application to the Registrar for registration or for exemption from registration under this Act.

(2) Subject to sections 7 and 11 (7) —

- (a) upon application being made by a society for registration under this Act, and such application being approved, the Registrar shall register the society; and
- (b) upon application being made by a society for exemption from registration under this Act, the Registrar may either grant such exemption with the approval of the Minister or refuse such exemption in which case the Registrar shall treat the application for exemption as an application for registration under this Act and shall, if the application meets the requirements of the Act, register the society.

(3) Before registering or refusing to register or granting or refusing to grant an exemption from registration to a society, the Registrar may —

- (a) require the society to provide him, in writing or otherwise, with such further information as he thinks is necessary; and
- (b) inspect the proposed premises of the society.

(4) On registering or exempting from registration a society, the Registrar shall issue to the society a certificate in the prescribed form, which certificate shall be evidence of registration or of exemption from registration of the society, as the case may be.”.

6. Section 11(6) of the Act is amended by substituting for the words “shall be guilty of an offence and liable to a fine not exceeding P50 and to a further fine of P10”, the words “shall be guilty of an offence and liable to a fine not exceeding P2 000 and to a further fine of P50”.

7. Section 12 of the Act is amended in —

- (a) subsection (1) by deleting the words “or any of its rules, regulations or bye-laws” appearing in paragraph (a) (ii);

Amendment of section 6 of the Act

Amendment of section 11 of the Act

Amendment of section 12 of the Act

- (b) subsection (2) by deleting the words “, rules, regulations or bye-laws,” appearing in paragraph (a);
- (c) subsection (3) by deleting the words “, rules, regulations or bye-laws” appearing therein; and
- (d) subsection (4) by substituting for the word “P200”, the word “P500”.
- Amendment of section 18 of the Act**
- 8. Section 18 of the Act is amended in —**
- (a) subsection (2) by substituting for the word “P200”, the word “P600”; and
- (b) subsection (3) by substituting for the word “P200”, the word “P600”.
- Amendment of section 20 of the Act**
- 9. The Act is amended by substituting for section 20, the following new section —**
- “Illegal society** 20. (1) A society shall be deemed to be an illegal society if it operates without being registered or exempted under this Act.
- (2) Where a society has made an application for registration or exemption under this Act, it shall not operate as such, until the application has been processed and is approved.”
- Amendment of section 21 of the Act**
- 10. Section 21 of the Act is amended by substituting for the word “P1 000”, the word “P5 000”.**
- Amendment of section 22 of the Act**
- 11. The Act is amended by substituting for section 22, the following new section —**
- “Penalties on members of illegal society** 22. Any person who knowingly is or acts as a member of an illegal society shall be guilty of an offence and liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both.”
- Amendment of section 23 of the Act**
- 12. Section 23 of the Act is amended by substituting for the word “P500”, the word “P2 000”.**
- Amendment of section 30 of the Act**
- 13. Section 30 (2) and (3) of the Act is amended by substituting for the word “P100”, the word “P500”.**
- Amendment of section 31 of the Act**
- 14. The Act is amended by substituting for section 31, the following new section —**
- “Establishment of Advisory and Arbitration Council** 31. (1) There is hereby established a Council to be known as the Advisory and Arbitration Council.
- (2) The members of the Council shall be appointed by the Minister and shall consist of the following —
- (a) six persons from a Non-Governmental Organisation Council;
- (b) one person from the general public, with expertise in matters related to societies;

- (c) the Permanent Secretary of the Ministry responsible for registration of societies under this Act, who shall be an *ex-officio* member; and
 - (d) a lawyer from government, who shall be an *ex-officio* member.
- (3) The Minister shall appoint the Chairperson of the Council from the general public, with expertise in matters related to societies.
- (4) The Vice Chairperson of the Council shall be elected by the members of the Council from among their number.
- (5) A member of the Council shall —
- (a) hold office for a period not exceeding four years; and
 - (b) be eligible for re-appointment for a further period not exceeding four years.
- (6) The Minister shall —
- (a) by notice in the *Gazette*, publish the appointment of the members of the Council, specifying the dates of their appointment and the period for which they are appointed to the office of the Council; and
 - (b) when specifying the period for which members of the Council are appointed, ensure that the appointment of one third or less of the members of the Council does not expire in one year.
- (7) The functions of the Council shall be to —
- (a) guide and advise the Minister on issues of registration of societies, which shall include —
 - (i) to assess and review matters referred to it by the Registrar, and
 - (ii) to assess and make recommendations on specific applications for registration, referred to it by the Registrar;
 - (b) arbitrate in cases of dispute in the registered societies, and other disputes that may arise between societies; and
 - (c) engage in the promotion and development of policy issues concerned with societies.
- (8) Subject to the provisions of this Act, the Council shall regulate its own procedure and establish such committees as it considers appropriate, and may delegate, to any such committee, such of its functions as it considers necessary.
- (9) The Council shall meet —
- (a) at least once in every three months;
 - (b) whenever it deems necessary to conduct its business; or
 - (c) when directed to do so by the Minister.
- (10) The quorum at any meeting of the Council shall be two thirds of the members of the Council, which members shall include the member presiding.
- (11) There shall preside, at any meeting of the Council —
- (a) the Chairperson; or
 - (b) in the absence of the Chairperson, the Vice Chairperson.

(12) A decision of the Council on any question shall be by a simple majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

(13) The Council may co-opt any person to attend any meeting of the Council on any matter for the purpose of assisting or advising the Council, but such person shall have no right to vote.

(14) Any member or any person co-opted under subsection (13), present at a meeting of the Council at which any matter in which the member or the person co-opted, or their immediate family members, is directly or indirectly interested in a private capacity is the subject of consideration —

- (a) shall immediately after the commencement of the meeting, disclose the interest;
- (b) shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter; and
- (c) such interest shall be recorded in the minutes of the meeting at which it is made.

(15) A member or a person co-opted under subsection (13) who fails to disclose an interest under subsection (14) and a decision is made benefiting the member or the person co-opted, or their immediate family members, such decision shall be null and void to the extent that it benefits such member or such person co-opted, or their immediate family members.

(16) A member of the Council or a person co-opted under subsection (13) shall —

- (a) observe and preserve the confidentiality of all matters coming before the Council, and such confidentiality shall subsist even after the termination of their terms of office or their mandates; and
- (b) where confidential information is revealed to them through working with the Council, not disclose the information to any other person unless required to do so in terms of any written law or for purposes of judicial proceedings.

(17) A member of the Council or any person co-opted under subsection (13) shall be paid such remuneration, and such allowances, if any, as the Minister may determine.

(18) Any member of the Council or any person co-opted who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.”.

15. The Act is amended by inserting immediately after section 31, the following new section —

31A. (1) A society or any person aggrieved by a decision of the Council on any dispute, may within 30 days of the date of the decision, appeal to the High Court against such decision.

Insertion of
section 31A

“Appeal
against
decisions
of Council

(2) The High Court may, on hearing an appeal in terms of sub section (1) –

- (a) confirm, vary or set aside any decision of the Council; or
- (b) make such other orders as to costs as it considers appropriate.”

16. Section 33 (4) of the Act is amended by substituting for the word “P10”, the word “P200” which appear therein.

Amendment
of section 33
of the Act

17. Section 34 (2) of the Act is amended by substituting for the word “P200”, the word “P500”.

Amendment
of section 34
of the Act

18. Section 39 (2) of the Act is amended by substituting for the word “P250”, the word “P1 000”.

Amendment
of section 39
of the Act

PASSED by the National Assembly this 25th day of March, 2015.

BARBARAN. DITHAPO,
Clerk of the National Assembly.