

**BOTSWANA ENERGY REGULATORY AUTHORITY  
(AMENDMENT) ACT, 2020**

No. 4



of 2020

**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Short title and commencement
2. Amendment of section 6 of Cap. 74:11
3. Amendment of section 8 of the Act
4. Amendment of section 9 of the Act
5. Amendment of section 17 of the Act
6. Amendment of section 18 of the Act
7. Transitional and savings provisions

**An Act to amend the Botswana Energy Regulatory Authority Act.**

*Date of Assent:* 03.03.2020

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as Botswana Energy Regulatory Authority (Amendment) Act, 2019, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Botswana Energy Regulatory Authority Act (hereinafter referred to as "the Act") is amended in section 6 by substituting for subsection (2), the following new subsection —

Amendment of section 6 of Cap. 74:11

"(2) Notwithstanding the generality of subsection (1), the Authority shall have the following specific functions —

- (a) regulate tariffs, including allowed revenue, for regulated entities in the regulated sector;
- (b) regulate coal supply agreements between collieries, coal suppliers and price-regulated generators;
- (c) subject to the regulated sector legislation, to license activities in the regulated sector;
- (d) regulate network access for independent power producers, privately financed projects in the regulated sector;
- (e) provide advisory technical expertise on tender procedures to the Public Procurement and Public Asset Disposal Board established under the Public Procurement and Asset Disposal Act;

Cap. 42:08

- (f) regulate network access and storage systems access in natural gas network, gas storage, oil pipelines, petroleum pipelines and storage of oil and petroleum products including third party access to energy, transport and storage infrastructure;
- (g) monitor the performance of the regulated entities in relation to levels of investment, availability, quantity, quality and standards of service, pricing, costs of services, efficiency of production, distribution and supply of service and any other matter decided upon by the Authority;
- (h) where relevant and so far as is practicable, ensure that the regulated entities have and maintain the resources to provide services and are otherwise fit and proper persons to provide the service;
- (i) oversee project development in the regulated sector;
- (j) implement policy in relation to the generation of electricity from renewable energy resources, as may be advised by the Minister;
- (k) process applications for and issue licences, permits and authorisations for the regulated sector as may be prescribed;
- (l) monitor and inspect licensees and enforce licence obligations;
- (m) impose administrative sanctions, issue and follow up enforcement procedures to ensure compliance with conditions of licences, permits and authorisations;
- (n) hear complaints and disputes from customers, consumers and regulated entities and resolve the disputes and complaints or facilitate dispute resolution;
- (o) ensure that the needs of low income, rural or disadvantaged groups or persons are taken into account;
- (p) take regulatory decisions in an open, transparent, accountable, proportionate, and objective manner; and
- (q) perform all additional functions and duties as may be conferred on it by any written law.”.

Amendment  
of section 8  
of the Act

**3. Section 8 of the Act is amended by substituting for that section, the following new section —**

“Board of  
Authority

8. (1) The powers and functions of the Authority shall be exercised and performed by the Board, which shall be governing body of the Authority.

(2) The Board shall consist of seven members appointed by the Minister.

(3) Membership of the Board shall consist of persons suitably qualified in disciplines relevant to the regulated sector.

(4) The Minister shall appoint, from amongst members, the Chairperson of the Board.

(5) The Deputy Chairperson of the Board shall be elected by members from amongst their number.

(6) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall not have any voting rights.”

4. Section 9 of the Act is amended by substituting for subsection (2), the following new subsection —

Amendment  
of section 9  
of the Act

“(2) Notwithstanding the generality of subsection (1), the Board shall —

(a) be responsible for the general control of the performance and management of the undertakings and affairs of the Authority;

(b) be responsible for the effective regulation of the regulated sectors;

(c) advise the Minister on policy matters concerning any regulated sector and regulated sector legislation; and

(d) review, where necessary, the objects and purposes of the Authority and recommend, to the Minister, such changes, consequent upon such review, as it considers appropriate.”

5. Section 17 of the Act is amended by substituting for that section, the following new section —

Amendment  
of section 17  
of the Act

“Meetings  
of Board 17. (1) Subject to the provisions of this Act, the Board shall regulate its own proceedings.

(2) The Board shall meet at least four times in a year, and hold such other meetings as are necessary for the efficient performance and exercise of its functions.

(3) The Chairperson shall call all meetings of the Board and there shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Deputy Chairperson; or

(c) in the absence of both the Chairperson and Deputy Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(4) At any meeting of the Board, the quorum shall be constituted by not less than five of the members.

(5) A decision of the Board on any question shall be by the majority of members present and voting at the meeting and, in the event of equality of votes, the person chairing shall have a casting vote.

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

(7) The proceedings of each meeting of the Board shall be recorded and confirmed at a subsequent meeting of the Board.”.

Amendment of  
section 18 of  
the Act

**6. Section 18 of the Act is amended by substituting for that section, the following new section —**

“Disclosure  
of interest

18. (1) If a member is present at a meeting of the Board or any committee of the Board at which any matter in which the member or immediate family of the member is directly or indirectly interested in a private capacity is the subject of consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter.

(2) A disclosure of interest made under 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 the Board is made benefiting such member, or an immediate family member of the member, such decision shall be null and void to the extent that it benefits such member or family member.

(4) A member who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both.

(5) For purposes of this section, “immediate family of the member” means the spouse, son, daughter, sibling or parent of the member.”.

Transitional  
and savings  
provisions

**7. Notwithstanding the amendment of section 8 of the Act —**

- (a) a person who was a full time member of the Board immediately before the coming into operation of this Act shall continue to be an employee of the Authority on the coming into operation of this Act;
- (b) a person who was a part time member of the Board immediately before the coming into operation of this Act shall continue to be a member of the Board on the coming into operation of this Act; and
- (c) any decision made and any action lawfully taken by the Board of the Authority before the coming into operation of this Act are hereby deemed to be decision made or actions taken by the Board of the Authority under this Act.

PASSED by the National Assembly this 20th day of March, 2020.

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