

VOLUME: XVII

BOTSWANA HOUSING CORPORATION

Part ID: I Preliminary (ss 1-2)

CHAPTER: 74:03

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1. Short title

This Act may be cited as the Botswana Housing Corporation Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"Board" means the Botswana Housing Corporation Board established by section 4;

"Chairman" means the person appointed by the Minister under section 4 to be the Chairman of the Board, or the person for the time being acting as the Chairman in accordance with the provisions of this Act;

"Corporation" means the Botswana Housing Corporation established under section 3;

"financial year" means the period of 12 months ending on the 31st March in each year;

"Government housing undertakings" means works established and arrangements concluded by the Government for the purpose of providing housing in Botswana;

"house" means a building designed or adapted for human habitation and includes the site thereof and the usual appurtenances, outbuildings, fences and permanent provision for lighting, water supply, drainage and sewerage;

"housing estate" means a tract of land on which houses have been, or are being, or are about to be constructed in the carrying out of a single project;

"housing scheme" means a proposal for the construction of several houses, whether or not the proposal includes the acquisition of land for such houses or the laying out, replanning, sub-division and development of the land for building sites, which proposal may include such proposals for the provision of roads, drains, sewers, other public services, open spaces and other improvements as may conveniently subserve such proposal;

"member" means a member of the Board appointed by the Minister in accordance with section 4.

3. Establishment of Corporation

There is hereby established a body to be known as the Botswana Housing Corporation, which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name, and, subject to the provisions of this Act, of holding and disposing of movable and immovable property, and of doing all such things as are necessary for, or are conducive to, the proper carrying out of its objects and the performance of its duties under this Act.

4. Establishment of Board

(1) The Minister shall appoint a Board to be known as the Botswana Housing Corporation Board, consisting of not less than seven or more than ten members who, in the opinion of the Minister, have knowledge and experience likely to contribute to the successful direction of the affairs and operations of the Corporation.

(2) From among the members appointed under subsection (1) the Minister shall designate one to be the Chairman of the Board.

(3) The Board shall, subject to any special or general directions of the Minister, be responsible for the overall direction of the affairs of the Corporation, and for such other matters as may be specified in this Act.

(4) Appointments to the Board, and of the Chairman, shall be signified by notice in the Gazette.

5. Tenure of office of members

(1) A member shall be appointed for such period, not exceeding four years, as shall be specified in the notice appointing him, and at the termination of such period he shall be eligible for reappointment:

Provided that, in appointing members to the Board, the Minister shall specify such periods of appointment as ensure that the appointments of not more than one third of the members expire in any one year.

(2) The appointment of the Chairman by the Minister shall be for a period of three years, but he shall be eligible for reappointment.

(3) Once in every year the members shall elect from among their number a Deputy Chairman, who shall hold such office for one year, and shall be eligible for re-election.

(4) If at any time the Minister is satisfied that a member is temporarily incapacitated by illness, absence or other sufficient cause from satisfactorily performing the duties of such member, he may appoint some fit and duly qualified person to be a temporary member in place of the incapacitated member during the period of his incapacity, and the person so appointed shall, whilst so appointed, be deemed to be a full member of the Board.

6. Disqualification of members

(1) No person shall be appointed to be a member who-

(a) has been declared insolvent or bankrupt under any law in any country, and has not been rehabilitated or discharged, or who has made a composition with his creditors and has not paid his debts in full;

(b) is incapacitated by physical or mental illness or infirmity from performing his functions;

(c) is a member of the National Assembly;

(d) has been convicted of an offence for which the prescribed sentence is a term of imprisonment, with or without the option of a fine, or who has been convicted of an offence involving dishonesty;

(e) has such financial or other interests, whether in the operations of the Corporation or otherwise, as is likely, in the opinion of the Minister, to prejudicially affect the discharge by him of the functions of a member.

(2) If the Minister is satisfied that a member-

(a) has become subject to any of the disabilities specified in subsection (1);

(b) has been absent from three consecutive meetings of the Board without the consent of the Chairman;

(c) is otherwise unable or unfit to carry out the functions of a member,

the Minister may declare his office as a member to be vacant, and may thereupon appoint another fit and qualified person to assume such office.

(3) Notwithstanding the provisions of subsection (2), the Minister may at any time, for reasons that appear to him to warrant such action, remove a member from office.

7. Payment of members

Members may be paid by the Corporation such remuneration, fees and allowances as may be approved by the Minister.

8. Presiding officer

Meetings of the Board shall be presided over by the Chairman, or in his absence the Deputy Chairman shall act as Chairman, or in the absence of the Chairman and the Deputy Chairman the members present shall elect one of their number to act as Chairman for that meeting.

9. Meetings of the Board

(1) The Board shall hold meetings as and when necessary for the proper operation of the Corporation, but so however that meetings shall be held at intervals not exceeding four months.

(2) Ordinary meetings of the Board shall be convened by the Chairman at such times and places as he may in his discretion determine.

(3) At any meeting of the Board a quorum shall be constituted by the presence of not less than a half of the number of members appointed under section 4(1).

(4) The Chairman, or in his absence the Deputy Chairman, shall convene a special meeting of the Board not later than one month after the receipt by him of a requisition signed by not less than three members requesting him to do so.

(5) Decisions of the Board shall be determined by a majority of the votes of the members present and voting at that meeting, but in the event of an equality of votes the Chairman of that meeting shall have a casting as well as a deliberative vote.

(6) No act, decision or proceeding of the Board shall be questioned on account of any vacancy in the membership thereof, or on account of any defect in the appointment of any member, if the act was done or authorized, or the decision was made, or the proceeding took place, by or in accordance with a majority vote of the persons who at the time were entitled to act as members.

(7) Any member who has an interest, or whose spouse or near relative has an interest, in any company or undertaking with which the Corporation proposes to make, or has made, any contract, or who has any interest at all in any contract which the Corporation proposes to make or has made, shall disclose the nature of such interest, and shall take no part in any proceedings of the Board relating to such contract.

(8) Any member who, in respect of any contract, and in contravention of the provisions of subsection (7), fails to disclose an interest, or votes or participates in any proceedings contrary to the provisions of that subsection, shall be guilty of an offence and liable to a fine of P500 and to imprisonment for six months, and the court before which he is convicted may order that he shall account to the Corporation for any profits that may accrue or have accrued to him or his spouse or near relative, as the case may be, in respect of such contract.

10. Standing orders

(1) The Board may, from time to time, make standing orders providing for the regulation of the proceedings of the Board and the Corporation, and without prejudice to the generality of the foregoing such standing orders may provide for-

(a) meetings of the Board;

(b) the conduct of the business of the Board, and the Corporation, and of the conduct of their operations, in the performance of their duties and the carrying out of their functions under this Act;

(c) the procedure for the allocation of houses and other buildings by the Corporation, and the assessments of any rents to be paid;

(d) the rates of interest, charges and conditions that may be specified in agreements entered into by the Corporation in respect of houses or other buildings sold by it upon terms of deferred payment;

(e) the rates of interest, charges and conditions in respect of loans made by the Corporation for the construction of houses and any other buildings;

(f) the duties and responsibilities of officers, employees and agents of the Corporation.

(2) Standing orders concerning the assessment of rents and the matters referred to in paragraphs (d) and (e) of subsection (1) shall be subject to the approval of the Minister, given with the concurrence of the Minister for the time being responsible for finance.

11. Signing of documents

(1) All documents made by, and all decisions of the Board, may be signified under the hand of the Chairman, or in his absence under the hand of the Deputy Chairman, or under the hand of a member of the Board so authorized in that

behalf by the Board.

(2) All other documents made by, and all other decisions of the Corporation may be signified under the hand of the general manager appointed under section 12(1), or under the hand of any other officer of the Corporation authorized in that behalf by the Board.

12. Committees

The Board may, from time to time, establish committees of the Board, and may delegate to such committees such of its powers or functions under this Act as it may specify in each case.

13. Appointment of officers and employees

(1) The Board shall, with the approval of the Minister, appoint a general manager of the Corporation, on such terms and conditions and such remuneration as it may determine.

(2) In appointing the general manager the Board shall select a person adjudged by it to be duly qualified by experience and training, and by past performance, to be capable of managing the affairs of the Corporation effectively.

(3) The general manager shall, subject to such directions on matters of general policy as may be given, and such other decisions as may be made, by the Board, be charged with the direction, administration and organization of the business of the Corporation, and of the employees of the Corporation.

(4) The Board shall from time to time, and upon consideration of the recommendations of the general manager, determine the staff necessary for the proper discharge of the functions of the Corporation, and the terms and conditions of employment of such staff.

(5) The appointment and dismissal of such members of the staff of the Corporation as are designated by the Board to be senior officers, shall be effected by the Board, upon consideration of the recommendations of the general manager.

(6) The appointment and dismissal of all staff other than senior officers shall be effected by the general manager, or by a senior officer authorized by him for that purpose.

(7) The Board may, with the approval of the Minister-

(a) determine pensions, gratuities or retiring allowances to be granted to any officers or employees of the Corporation, and the contributions that such officers or employees may be required to make to any pension or contributory scheme, or any provident fund that the Corporation may establish;

(b) require the Corporation to establish, and make contributions to, any provident, pension or superannuation fund, or medical fund for its officers or other employees; (c) from time to time appoint and employ, upon such terms and conditions as it may deem fit, such agents as it may consider necessary.

14. Functions and powers

(1) The functions of the Corporation shall be-

- (a) to provide for the housing, office and other building needs of the Government and local authorities;
- (b) to provide for, and to assist and to make arrangements for other persons to meet the requirements of paragraph (a);
- (c) to undertake and carry out, and to make arrangements for other persons to undertake and carry out building schemes in Botswana.

(2) The Corporation shall have all powers necessary for the performance of its functions and duties, and, without prejudice to the generality of the foregoing, may-

(a) undertake the management of land, houses, classes of houses and housing estates, and other buildings in respect of which the Government transfers, vests, makes over or entrusts ownership or lesser rights or interests to the Corporation;

(b) carry out surveys and assessments of needs for housing and other buildings of every kind throughout Botswana;

(c) devise, undertake and carry out programmes for the provision of housing and other buildings;

(d) determine priorities in accordance with which such programmes shall be undertaken;

(e) undertake the construction and management of houses and the development and management of housing estates, and, where appropriate, the development and management of other buildings and properties;

(f) devise, prepare, undertake and carry out housing schemes;

(g) sell houses or other buildings outright, or on terms of tenant purchase, or legal mortgage, or otherwise, or lease them;

(h) purchase, hold or manage any land or interest in or right over land, and sell, lease or otherwise dispose of, any land or interest in or right over land owned or held by the Corporation upon such terms and conditions as the Board may determine, including, in the case of sale by the Corporation, conditions as to the payment of the price upon deferred terms:

Provided that a lease granted by the Corporation shall not be assigned by the lessee, nor shall such lessee sublet, without the consent in writing of the general manager or of a senior officer so authorized by the general manager;

(i) either for or in connection with any house or building or estate owned, developed, constructed or managed by the Corporation, provide, and where appropriate maintain, roads, footways, bridges, drains, sewers and water courses other than those the maintenance of which the Government or a local authority has undertaken or decides to undertake;

(j) acquire, construct, maintain or repair any vehicle, plant or apparatus necessary or desirable for the performance of the functions of the Corporation;

(k) enter into agreement with any person for the supply, construction, manufacture, maintenance or repair by such person of any movable property that is necessary for the performance of the functions of the Corporation, or for the provision by such person of any services required of the Corporation for the performance of its functions;

(l) subject to the approval of the Minister, enter into agreement with any person for the management by such person of any housing or building estate owned by the Corporation;

(m) subject to the provisions of this Act, raise money on loan for the purpose of funding any of its programmes;

(n) lend money for the construction of houses or other buildings, or to enable housing or building schemes to be carried out;

(o) administer on an agency basis such funds as may lawfully be entrusted to the Corporation by the Government or by a local authority.

15. Powers to contract

(1) The Corporation may enter into such contracts as may be necessary or expedient for the carrying out of its functions under this Act.

(2) Any contract may be entered into, and any instrument may be executed, on behalf of the Corporation, by the general manager or by any person generally or specially authorized by the Board for that purpose.

16. Co-operation with authorities

In the discharge of its functions the Corporation shall co-operate with local and other public authorities, including departments, agencies and instruments of the Government, and shall consult with local authorities on matters of concern to the Corporation which affect their interests.

17. Research and records

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

18. Power of Minister to give directions

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

19. Funds of the Corporation

- (1) The funds of the Corporation shall comprise-
- (a) sums borrowed in terms of section 21(1);
 - (b) revenue accruing from the activities of the Corporation;
 - (c) such sums as may be appropriated for the activities of the Corporation by the National Assembly; and
 - (d) contributions or endowments from any other source.

20. Financial policy of the Corporation

- (1) The Corporation shall so manage its business that taking one year with the next-
- (a) its revenue is sufficient for meeting all expenditure properly chargeable to revenue; and
 - (b) sufficient provision is made for depreciation of assets.
- (2) Except in so far as is required by subsection (1) the making of profits shall not be the object of the activities of the Corporation.

21. Borrowing powers of Corporation

- (1) To enable the Corporation to discharge its functions and meet its obligations under this Act, it may, subject to the approval of the Minister for the time being responsible for finance, borrow on such terms, and in such currencies as may be agreed between it and the lender, such sums as it may require.
- (2) The Corporation may charge its assets undertakings and revenues with the repayment of any money borrowed under this section, together with interest thereon, and may issue debentures, bonds or other securities in order to secure the repayment of any money borrowed and interest thereon, and may do all other things necessary in connection with or incidental to such borrowing as are authorized by this section, subject to the approval of the Minister for the time being responsible for finance.

22. Investment

- (1) The Corporation may, with the approval of the Minister, given with the concurrence of the Minister responsible for finance, and subject to such conditions as he may, with such concurrence, determine, invest-
- (a) such part of its funds as are not required for the purposes of its functions; and
 - (b) the moneys forming part of its reserve funds and any provident fund established by the Corporation.
- (2) The powers of the Minister under this section shall extend to the amount which may be invested and the nature of the investment and the terms and conditions thereof, and his approval may be either general or limited to a specific investment.

23. Vesting of property, etc.

- (1) Any properties, assets, rights, debts, liabilities and obligations of the Government, and the benefits and burden of all contracts made by or on behalf of the Government, which are part of or concern or relate to Government housing or other building undertakings may, with the consent of the Board, be transferred to and vest in the Corporation as hereafter provided, on terms and conditions agreed to by the Board.
- (2) The Minister may, from time to time, by notice in the Gazette, designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government, and contracts made by or on behalf of the Government, which are part of, or concern or relate to Government housing or other building undertakings, and as from the date specified in any such designation the properties, assets, rights, debts, liabilities and obligations so designated and the benefit and burden so designated shall vest in the Corporation.

24. Accounts and audit

- (1) The Corporation shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities (real or contingent), and income and expenditure of the Corporation.
- (2) The form of the accounts and of the statement shall be such as to secure the provision of separate information in

respect of each of the housing schemes and of the other activities of the Corporation.

(3) The accounts of the Corporation in respect of each financial year shall within four months after the end thereof be audited by auditors to be appointed by the Board with the approval of the Minister:

Provided that no person shall be qualified to be so appointed if he is a member, officer or servant of the Corporation or unless he holds one or more of the qualifications referred to in section 128(1) of the Companies Act.

(4) The auditors shall report in respect of the accounts for each financial year, in addition to any other matters which they deem pertinent to comment on, whether or not-

(a) they have received all the information and explanations which, to the best of their knowledge and belief, were necessary for the performance of their duties as auditors;

(b) the accounts and related records of the Corporation have been properly kept;

(c) the Corporation has complied with all the financial provisions of this Act with which it is the duty of the Corporation to comply; and

(d) the statement of accounts prepared by the Corporation was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Corporation.

(5) The Corporation shall, within 30 days of receiving the report of the auditors, send such report and a copy of the audited accounts to the Minister.

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

25. Bad debts

The Corporation may, with the approval of the Minister given in relation to individual debts, write off bad debts.

26. Liability to pay tax, etc.

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

27. Entry upon land

(1) In so far as is required in order to secure the development or utilization of property for the provision of housing or other buildings in the national interest the Corporation may by such assistants, servants or agents and with such workmen, animals, vehicles, appliances and instruments as are necessary for the purpose of investigating and planning the use of land for housing or other buildings enter upon any land and-

(a) survey and take levels of land, dig or bore under the subsoil, and do all other acts necessary to ascertain whether land is suitable for housing or other buildings purposes;

(b) clear, set out and mark the boundaries of land in respect of which it is proposed to prepare a housing or other buildings scheme:

Provided that-

(i) no person shall enter upon any land or into any building or enclosed place thereon (except with the consent of the owner or occupier thereof) without previously giving such owner or occupier at least seven days' notice of his intention to do so;

(ii) reasonable notice of the intention to exercise any of the other powers conferred by this subsection shall be given to the owner or occupier of the land;

(iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this subsection.

(2) After any entry upon land made under subsection (1), the Corporation shall promptly pay such compensation (if any) as may be adequate for any damage done or acts performed in pursuance of subsection (1)(a) or (b) and any dispute as to the interest or right of any person claiming an interest in or right over such land, the legality of such entry or acts, or the amount (if any) of compensation to which such person may be entitled by reason of such damage or acts may, if the amount of compensation claimed does not exceed the jurisdiction of a court presided over by a Magistrate Grade I or over having jurisdiction in the area where the land is situated, be referred by any party to such dispute to such court whose decision shall be subject to an appeal to the High Court, and, if the amount claimed does exceed the said jurisdiction, such dispute may be referred to the High Court; and any person aggrieved by any delay in the payment of compensation due to him may apply to the High Court for the purpose of obtaining prompt payment thereof.

28. Compulsory acquisition of land

(1) The Corporation may, with the approval of the President and subject to such conditions as he may impose, by compulsory purchase acquire such land and interests in or rights over land as are necessary for the purpose of providing housing or other buildings or works ancillary thereto by way of housing or other buildings schemes or otherwise.

(2) No land or interest in or right over land shall be acquired in terms of subsection (1) except where the acquisition is necessary or expedient in order to secure the development or utilization of property for the provision of housing or other buildings or works ancillary thereto in the national interest.

(3) Application for the approval of the President in terms of subsection (1) shall be made on notice to every person having an interest in or right over the land, interest or right which the Corporation proposes to acquire.

(4) The President shall not grant approval in terms of subsection (1) unless he is satisfied-

(a) that the Corporation is unable to acquire the land, interest or right on reasonable terms by agreement with the owner or holder thereof; and

(b) that such land, interest or right is reasonably required by the Corporation for the purpose mentioned in subsection (1).

(5) When granting approval in terms of subsection (1) the President shall fix a date upon which the acquisition shall take effect.

(6) Adequate compensation shall be promptly payable by the Corporation to any person having an interest in or right over any property acquired in terms of subsection (1), and any dispute as to such interest or right, the legality of the acquisition, or the amount of compensation to which any such person may be entitled by reason of the acquisition shall be determined in accordance, mutatis mutandis, with the provisions of the Acquisition of Property Act and for the purpose of such determination and for the purpose of obtaining prompt payment of compensation such person shall have all the rights of access to the High Court provided by the said Act.

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BOTSWANA HOUSING CORPORATION

Part ID: VIII General (ss 29-34)

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29. Annual report

(1) The Corporation shall, when sending the auditors' report and copy of the audited accounts in respect of each financial year in terms of section 24(5), submit to the Minister a comprehensive report on its operations during such year and the Corporation shall publish it in such manner as the Minister may specify.

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

30. Power to call for information

The Minister may for purposes associated with the administration of this Act, require the Corporation to provide him with estimates of the Corporation's future revenue and expenditure, and with such other information relating to its activities and operations, including books of accounts, records and documents, as he may reasonably require for those purposes.

31. Regulations

The Minister may, after consulting the Board, make regulations, not inconsistent with the provisions of this Act, for the better carrying out of the objects and purposes thereof and for the prescription of any matter or thing that is to be or may be prescribed.

32. Service of notice

Any notice, order or other document may be served upon the Corporation by delivering it, or by properly addressing, prepaying and posting it by registered post, to the general manager at the headquarters of the Corporation at Gaborone.

33. Protection from personal liability

No matter or thing done or omitted by any member of the Board or by any officer or employee of the Corporation shall, if the matter or thing is done or omitted bona fide in the course of the operations of the Board or the Corporation, render such person, or any person acting under his direction, personally liable to any action, claim or demand.

34. Oath of secrecy

(1) Except for the purposes of the performance of, and within the scope of, his duties and the exercise of his functions, or when lawfully required to do so, either by a court, or under any written law, or in the investigation of any offence, no member of the Board or officer or employee of the Corporation, or auditor appointed under section 24(3) shall disclose to any person information relating to the affairs of the Corporation which he has acquired in the performance of his duties or the exercise of his functions.

(2) Every member of the Board and every officer and employee of the Corporation shall take and subscribe to an oath or declaration of secrecy in the manner and form determined by the Minister.

(3) Every person required to take and subscribe an oath of secrecy under subsection (2) who, in contravention thereof, and without lawful excuse, reveals any matter or thing which has come to his knowledge in the performance of his duties or the exercise of his functions, shall be guilty of an offence and liable to a fine of P5 000 and to imprisonment for 5 years.

(4) Any person required in accordance with the provisions of this section to take and subscribe an oath or declaration of secrecy who, without or before doing so, proceeds in the performance of his duties or the exercise of his functions, shall be guilty of an offence and liable to a fine of P200.