

**CHAPTER 33:01**  
**LAND SURVEY**  
ARRANGEMENT OF SECTIONS

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Act 54, 1970,  
Act 37, 1971,  
Act 41, 1972,  
Act 11, 1976,  
S.I. 12, 1977,  
S.I. 157, 1985,  
Act 7, 1990,  
Act 9, 2011,  
S.I. 44, 2012.

**An Act to provide for the survey of land in Botswana and to define units of land measure to be recognised in Botswana and for matters incidental thereto.**

[Date of Commencement: 18th December, 1959]

**PART I**

***Preliminary (ss 1-5)***

**1. Short title**

This Act may be cited as the Land Survey Act.

**2. Interpretation**

In this Act unless the context otherwise requires-

"**approve**", in relation to the Director and to any general plan or diagram, means the signing of such general plan or diagram in order to signify that the requirements of this Act have been complied with in regard to such general plan or diagram;

"**Council**" means the Land Surveyors' Council established under section 4;

"**Deeds Registry**" means the deeds registry established under section 3 of the Deeds Registry Act (Cap. 33:02);

**"diagram"** means a document containing geometrical, numerical and verbal representations of a piece of land, which has been signed by a land surveyor and which has been approved or certified by the Director or other officer empowered under this Act so to approve or certify a diagram and includes a diagram or copy thereof prepared in the Director's office and approved or certified as aforesaid or a document which has, at any time prior to the commencement of this Act, been accepted as a diagram in the Deeds Registry; but does not include a diagram attached to or issued with a certificate of occupation to land situate in the District of Ghanzi;

**"Director"** means the Director of Surveys and Lands;

**"general plan"** means a plan representing the relative positions and dimensions of five or more pieces of land, which has been signed by a land surveyor and which has been approved or certified as a general plan by the Director or other officer empowered under this Act to do so and includes a general plan or a copy thereof in the Director's office and approved or certified as aforesaid or a general plan which has, at any time prior to the commencement of this Act, been accepted as a general plan in the Deeds Registry;

means a person recognised as such for the purposes of this Act;

**"member"** means a member of the Council appointed under section 4A;

, in relation to land, means the person registered in the Deeds Registry as the owner of such land and includes the liquidator of a company or the representative recognised by law of any owner who has died, become insolvent, assigned his estate, is a minor or of unsound mind or is otherwise under disability where such liquidator or representative is acting within the powers conferred on him by law; and includes the person in whom the ownership of land is vested by statute and the allottee of land held under provisional title and in process of alienation by the State;

**"public place"** means any street, road, avenue, path, lane, sanitary lane, thoroughfare, square, park, recreation ground, public sports ground, public aerodrome or open space shown on a general plan and all land (other than lots shown on a general plan) the control whereof is vested, to the entire exclusion of the owner, in either the State or a local authority;

**"reference mark"** means a survey mark of permanent construction placed in a township, village or settlement to form one of a system of such marks for the purpose of basing the survey or resurvey of the pieces of land in such township, village or settlement thereon or connecting such survey or resurvey thereto;

**"Registrar"** means the Registrar of Deeds;

**"registration"**, in relation to any land, means a registration of any real right in or to such land in accordance with the provisions of the law relating to the registration of deeds, and "registered" shall have a corresponding meaning;

**"secondary triangulation"** or "tertiary triangulation" means a triangulation which in the opinion of the Director is of the order of a secondary or tertiary triangulation, as the case may be, according to the classification generally recognised in surveying in Southern Africa;

**"subdivision"** means the division of any land, other than buildings, into two or more parts; means the High Court of Botswana or any judge thereof;

**"township, village or settlement"** means a group of pieces of land which are used for residential, industrial, agricultural, horticultural or similar purposes or are intended or destined or likely to be used for any such purpose;

**"unit of land measure"** has the meaning assigned to it under section 47.

### **3. Director of Surveys and Lands**

(1) There shall be a Director of Surveys and Lands for Botswana.

(2) Subject to the provisions of this Act, the Director shall-

(a) supervise and control the survey and charting of land for purposes of registration in the Deeds Registry;

(b) take charge of and preserve all records appertaining to surveys of land which, prior to the commencement of this Act, were preserved as records of Botswana in the office of the Surveyor-General for the Province of the Cape of Good Hope of the Republic of South Africa, or which hereafter may become records of his office;

(c) examine all general plans and diagrams of surveys of land before any registration of such land is effected in the Deeds Registry, and approve all such plans and diagrams if he is satisfied that such surveys have been properly carried out;

(d) on the diagram of any piece of land-

(i) define the geometrical figure representing any portion of such land the transfer whereof has been registered in the Deeds Registry, and deduct the numerical extent of such portion;

(ii) define the geometrical figure representing any portion thereof for which a certificate of township title or a certificate of registered title has been issued under the provisions of the law relating to the registration of deeds, and deduct the numerical extent of such portion;

(e) cancel or amend in accordance with the provisions of any law any general plan or diagram found to be incorrect;

(f) prepare, certify and issue, at the request of any person and on payment by such person of such fees as may be prescribed, copies of diagrams and other documents filed in his office which are available to the public, and copies of general plans and diagrams registered in the Deeds Registry;

(g) compile and amend from time to time such maps as may be required by the Government, and generally exercise all such powers and perform all such duties as are by any law conferred or imposed upon him.

(3) Any officer employed in the Director's office who is a land surveyor may, if deputed by the Director, do any act or thing which may lawfully be done under this Act or any other law by such Director and any other officer employed in the Director's office may, if deputed by the Director, do any act or thing which may lawfully be done under subsection (2)(d) and (g).

#### **4. Land Surveyors' Council**

(1) There is hereby established a Council, to be known as the Land Surveyors' Council, which shall consist of the following members-

(a) the Director who shall be the Chairperson of the Council;

(b) two land surveyors from the Surveys and Mapping Department appointed by the Minister;

(c) two land surveyors from the land boards appointed by the Minister; and

(d) two land surveyors from the private sector, elected by the Botswana Surveying and Mapping Association and appointed by the Minister.

[9 of 2011, s. 4.]

(2) Every member shall take an oath of affirmation in the form prescribed.

[9 of 2011, s. 4.]

(3) The Council may, through its Chairperson, continue to function although not meeting and every act so performed during such time shall be approved, in writing, by a majority of its members.

[9 of 2011, s. 4.]

#### **4A. Minister's power to appoint members required to be elected**

(1) The Minister shall appoint a member where the Botswana Surveying and Mapping Association fails, neglects or refuses to elect a member-

(a) within 21 days of notification by the Minister to elect a member; or

(b) within the period referred to in section 4D to fill a vacancy in terms thereof.

(a) subsection (1) (a) shall hold office for such period, not exceeding two years, as the Minister may determine; and

(b) subsection (1) (b) shall hold office in accordance with section 4D, and shall be deemed to have been duly elected to the Council.

#### **4B. Tenure of office**

(1) A member shall hold office for such period, not exceeding three years, as may be specified in the notice appointing him.

[9 of 2011, s. 4.]

(3) Notwithstanding the provisions of subsection (1), the Chairperson shall hold office for a period of three years.

[9 of 2011, s. 4.]

#### **4C. Disqualification, removal and resignation**

(1) No person shall be appointed or elected as a member or be qualified to continue to hold office as a member who has-

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

- (a) is absent without reasonable cause from three consecutive meetings of the Council of which he has had notice;
- (b) is inefficient;
- (c) has been found to be physically or mentally incapable of performing his duties efficiently, and his medical doctor has issued a certificate to that effect; or
- (d) has failed to comply with the provisions of section 5C.

[9 of 2011, s. 4.]

(4) The office of a member shall become vacant after-

- (a) a period of 30 days from the date a ruling against the member is made on all appeals made in respect of charges levelled against him under subsection (1) (b);
- (b) a period of 30 days has elapsed from the date the member has given notice in writing to the Chairperson under subsection (3), of his intention to resign;
- (c) a period of 30 days has elapsed from the date the member is given notice in writing by the Chairperson to vacate office; or
- (d) the member is summarily dismissed by the Council on the grounds of contravening a provision of this Act or for misconduct under subsection (2) (d).

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- (a) amounts to failure to perform in a proper manner any duty imposed on him as a member;
- (b) is prejudicial to the efficient conduct of the Council; or
- (c) tends to bring the Council into disrepute.

#### **4D. Filling of Vacancy**

(1) The Minister shall, on being notified by the Council in writing of a death or vacation of office of a member appointed by the Minister, appoint, within such period as may be specified in the notice, being not less than 60 days from the date of the notification, a member to fill the vacancy, and the member so appointed shall hold office for the remainder of the period for which the former member would, but for his death or the vacation of his office, have continued in office.

[9 of 2011, s. 4.]

#### **5. Functions of Council**

(1) The functions of the Council are-

- (a) to set and carry out such tests and examinations as are prescribed in section 7 (2);
- (b) to register land surveyors;
- (c) to hear disciplinary allegations, and carry out disciplinary proceedings where necessary, against a land surveyor for professional misconduct; and

(d) to perform such other functions as may be assigned.

[9 of 2011, s. 5.]

(2) For the purpose of carrying out the provisions of subsection (1) (a) the Council may, from time to time, appoint a maximum of three examiners and invigilators as may be necessary.

[9 of 2011, s. 5.]

(3) The Council shall prescribe the following procedures for the purposes of subsection (1) (c)-

(a) hearing a disciplinary allegation;

(b) carrying out disciplinary proceedings;

(c) the penalty which may be awarded by the Council for professional misconduct; and

(e) any other procedure that the Council may consider appropriate.

#### **5A. Election of Vice Chairperson**

(1) At the first meeting of the Council, the members shall elect, from among their number, a Vice Chairperson who shall hold office for such period, being not less than 12 months, as the Council may from time to time determine unless he ceases to be a member.

[9 of 2011, s. 5.]

(3) The Chairperson or Vice Chairperson may vacate his office as such even though he remains a member.

[9 of 2011, s. 5.]

#### **5B. Meetings of Council**

(1) Subject to the provisions of this Act, the Council shall regulate its own proceedings.

[9 of 2011, s. 5.]

(2) The Council shall meet at such times and places as may be necessary for the performance of its duties.

[9 of 2011, s. 5.]

(3) Upon giving notice in writing of not less than 14 days, a meeting of the Council may be called by the Chairperson and shall be called if not less than one half of the members so request in writing.

[9 of 2011, s. 5.]

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

[9 of 2011, s. 5.]

(6) There shall preside, at any meeting of the Council-

(a) the Chairperson;

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

(c) in the absence of the Chairperson and Vice Chairperson, such member as the members present may elect from among their number for the purposes of the meeting.

[9 of 2011, s. 5.]

(8) The Council may invite any person whose presence it considers necessary, to attend and participate in the deliberations of a meeting of the Council, but such person shall have no vote.

[9 of 2011, s. 5.]

(9) The provisions of sections 5C, 5D and 5E shall, with the necessary modifications, apply to a person invited by the Council under subsection (8).

[9 of 2011, s. 5.]

#### **5C. Disclosure of interest**

(1) Where a member is present at a meeting of the Council at which meeting a matter which is the subject of consideration is one in which he is directly or indirectly interested in a private capacity, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest

and shall not take part in any consideration or discussion of, or vote on any question touching upon, such matter.

[9 of 2011, s. 5.]

(3) Where a member fails to disclose his interest in accordance with subsection (1) and a decision by the Council is made benefitting such member, such decision shall be null and void.

[9 of 2011, s. 5.]

#### **5D. Confidentiality**

(1) A member shall not disclose any confidential information relating to the affairs of the Council, which he acquired during the performance of his duties under this Act.

- (a) within the scope of his duties under this Act; or
- (b) when required to-
  - (i) by an order of court,
  - (ii) under any written law, or
  - (iii) in the investigation of an offence.

[9 of 2011, s. 5.]

#### **5E. Remuneration of members**

(1) A member may be paid such remuneration and other allowances and such travelling, accommodation and subsistence expenses incurred during his service on the Council as may be determined by the Minister.

[9 of 2011, s. 5.]

(2) Members shall receive the same remuneration except for the Chairperson and the Vice Chairperson who shall receive remuneration commensurate with their positions.

[9 of 2011, s. 5.]

#### **5F. Validity of decisions and acts of Council**

A decision or act of the Council done under the authority of the Council shall not be invalid by reason only of the fact that-

- (a) the Council did not consist of the full number of members for which provision is made under section 4;
- (b) the various members did not have the qualifications prescribed under section 4; or
- (c) a disqualified person acted as a member of the Council.

#### **5G. Reports to Minister**

(1) The Chairperson shall from time to time submit, to the Minister, reports with regard to matters relating to the activities of the Council which, in the opinion of the Council, should be brought to the notice of the Minister.

[9 of 2011, s. 5.]

### **PART II** **Surveyors (ss 6-10)**

#### **6. Recognition as land surveyor**

(1) No person shall practise as a land surveyor in Botswana unless he is-

- (a) registered as a land surveyor in accordance with this Act; or
- (b) employed in the service of the Government of Botswana as Director of Surveys and Lands, Deputy Director of Surveys and Lands, Senior Land Surveyor or a Surveyor.

(2) The Director shall cause to be kept a register of persons registered to practise as land surveyors in Botswana.

(3) Any person desiring to be registered as a land surveyor shall make application in writing to the Director and shall provide proof-

- (a) ...;
- (b) that he possesses the qualifications required under section 7;

- (c) that he has paid the prescribed registration fee; and
- (d) that he has taken such oath or affirmation as may be prescribed:

Provided that where the applicant is a public officer, and for the period whilst he is a public officer, no registration fee shall be payable.

(4) The Director shall on the registration of any person issue to him a certificate that he is so registered and is entitled to practise as a land surveyor in Botswana.

(5) Any person aggrieved by a refusal of the Director to register him as a land surveyor in terms of this section may, within 30 days of the notification of such refusal, appeal to the Minister whose decision shall be final.

## **7. Qualifications for registration as a land surveyor**

(1) A person shall not qualify to be registered as a land surveyor in terms of section 6 unless he is-

- (a) a Fellow or Professional Associate of the Royal Institute of Chartered Surveyors in subdivision V (Land Surveying); or
- (b) the holder of a university degree in surveying, geomatics or mapping sciences.
  - (i) satisfies the Council that he has field experience of the types of survey required by this Act,
  - (ii) carries out a trial survey, to the satisfaction of the Council,
  - (iii) satisfies the Council that he is capable of conducting land surveys in accordance with the provisions of this Act, and
  - (iv) has passed, to the satisfaction of the Council, any prescribed examinations set by the Council.

[9 of 2011, s. 7.]

## **8. Duties of surveyor and non-liability of Government**

(1) A land surveyor shall-

- (a) carry out every survey undertaken by him in such manner as will ensure accurate results, and in accordance with this Act;
- (b) be responsible to the Director for the correctness of every survey carried out by him or under his supervision and for the correctness of every general plan and diagram which bears his signature;
- (c) deposit with the Director for the purpose of being permanently filed in the Director's office such records as may be prescribed relative to-
  - (i) every survey carried out by him after the commencement of this Act for the purpose of or in connection with any registration of land in the Deeds Registry;
  - (ii) every general plan or diagram prepared as a result of any such survey; and
  - (iii) every survey carried out by him after such date for the replacement of a beacon; and
- (d) when required by the Director, forthwith correct, in any survey carried out by such land surveyor after the commencement of this Act or in any work appertaining thereto, any error which is in excess of the prescribed limits of error or any other error which has resulted in the approval of an erroneous diagram or in the incorrect replacement of a beacon, and take such steps as may be necessary to ensure the amendment of any diagram, general plan or title-deed based on such incorrect survey or to adjust the position of any beacon placed in accordance with such incorrect survey.

(2) Neither the Government nor any officer thereof shall be liable for any defective survey or work appertaining thereto performed by a land surveyor notwithstanding that a general plan or diagram relating to such survey or work has been approved by the Director or accepted for registration in the Deeds Registry.

## **9. Suspension or cancellation of right to practise as surveyor**

(1) If a land surveyor-

- (a) signs, except as provided in section 39(1), a general plan or a diagram of any piece of land in respect of which he has not carried out or personally supervised the whole of the survey and field operations and carefully examined and satisfied himself as to the correctness of the entries in any field



book and of any calculations, working plans and other records in connection therewith made by any other person;

(b) signs a defective general plan or diagram knowing it to be defective;

(c) repeatedly performs defective surveys or surveys to which adequate checks have not been applied or repeatedly submits survey records, diagrams or plans which are defective or erroneous;

(d) makes any entry in a field book, copy of a field book or other document which purports to have been derived from observation or measurement in the field when it was not in fact so derived;

(e) knowingly supplies erroneous information to the Director in connection with any survey, boundaries or beacons of land; or

(f) is guilty of such improper conduct as, in the opinion of the Council, renders him unfit to practise as a land surveyor,

[9 of 2011, s. 8.]

the Council may apply by way of motion for the suspension or cancellation of the right of the surveyor to practise as such and the court may thereupon suspend or cancel such right or make such other order as it sees fit.

[9 of 2011, s. 8.]

(2) The Council shall cause to be endorsed on the register to be kept in terms of section 6 the fact of any suspension or cancellation or the terms of any such other order made in terms of subsection (1).

[9 of 2011, s. 8.]

#### **10. Unauthorised practice as surveyor**

Any person, other than a land surveyor entitled to practise as such, who-

(a) performs any survey for the purpose of preparing any diagram or general plan to be filed or registered in the Deeds Registry or referred to in any matter whatsoever in any other document to be so filed or registered;

(b) performs any survey affecting the delimitation of the boundaries or the location of the beacons of any land registered or to be registered in the Deeds Registry; or

(c) holds himself out in any manner whatsoever as a land surveyor, shall be guilty of an offence and liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 10 years, or to both.

### **PART III**

#### **Original Surveys and Resurveys (ss 11-18)**

#### **11. Original survey of land**

(1) Where a land surveyor carries out a survey of any piece of land to which a title deed has been issued but of which a diagram has not previously been registered, he shall deliver or transmit to the Director for examination and filing or record in the Director's office-

(a) his certificate that the corner points of such piece of land are defined by beacons complying with the regulations, and a minute description of each such beacon as it existed at the commencement of such survey and, if the land surveyor has rebuilt any such beacon or substituted another beacon for it, the reason therefor and a minute description of the beacon after such rebuilding or substitution;

(b) such original records or copies thereof as may be prescribed relative to the survey and such further proofs of the accuracy of the survey and of the correct identification of the original beacons of such piece of land or of their positions as the Director may require, and any other information which the land surveyor may consider material and useful or which the Director may require.

(2) No diagram of any such piece of land shall be approved unless-

(a) if the piece of land is surrounded by or situate within the prescribed distance from any trigonometric stations or reference marks, the survey of such piece of land has been based upon two or more stations in such manner as may be prescribed;

(b) there has been lodged with the Director a document (in this section referred to as "the agreement") in the form set out in the Schedule, signed by the owner of such piece of land contiguous thereto (in this section referred to as a "contiguous owner") or by his duly authorised agent and by two competent witnesses to each signature, being persons of either sex above the age of 14 years, one of whom may be the land surveyor performing the survey:

Provided that-

(i) in respect of any beacon or boundary which is under this Act or any other law deemed to have been lawfully established or in respect of any beacon or boundary common to such piece of land and to unalienated State land, no such agreement shall be necessary;

(ii) in respect of such contiguous land which is held by two or more owners in undivided shares, it shall be sufficient if the agreement is signed by the owners of not less than a three-fourths share in such land; or

(c) there has been lodged with the Director by such land surveyor his certificate that, to the best of his knowledge and belief, the boundaries of such piece of land have not by agreement between the owner of such piece of land and a contiguous owner been so changed as to effect a transfer of any land otherwise than in accordance with law.

(3) The Director may, unless otherwise directed by an order of the court, refuse to approve a diagram of any such piece of land if he has reasonable grounds for believing that any area not owned by the owner of that piece of land has been included within the boundaries thereof as defined in such diagram or that payment of any taxes or duties has been or will be evaded by any registration in the Deeds Registry based upon such diagram.

(4) If any contiguous owner fails to sign the agreement within a period of one month from the date upon which he or his duly authorised agent was called upon to sign the agreement, the owner of such piece of land or his duly authorised agent shall serve upon such contiguous owner or his duly authorised agent a notice in writing, informing him that if he fails, within a further period of one month from the date of service of such notice, to lodge with the Director an objection to the boundaries or beacons of such piece of land as set forth in the agreement which he was called upon to sign, he will be deemed to have agreed to such boundaries and beacons:

Provided that-

(i) if the contiguous owner is outside Botswana when so called upon to sign such agreement and when so served with the notice, the periods of one month shall be extended to periods of three months;

(ii) if the address of any such contiguous owner cannot be ascertained by diligent inquiries, the publication of the notice in three consecutive issues of the *Gazette* and once every week during three consecutive weeks in a newspaper (to be approved of by the Director) circulating in Botswana, shall be deemed to be a service of the notice for the purposes of this subsection.

(5) The service of the notice referred to in subsection (4) shall, subject to the second proviso to that subsection, be effected by personal delivery or by registered post and in the case of service by registered post the date of service shall be deemed to be the date upon which the letter containing such notice would in the ordinary course reach the post office from which it is to be delivered to the addressee thereof.

(6) Whenever-

(a) a contiguous owner has failed to sign the agreement; and

(b) the Director has been satisfied by such proof as he may deem necessary that the provisions of subsection (4) have been complied with; and

(c) no objection to any beacon or boundary adopted in the survey of such piece of land has been lodged with the Director by such contiguous owner within the period mentioned in the notice served upon him in terms of subsection (4); and

(d) the other requirements of this Act have been complied with in regard to the survey of such piece of land and the diagram thereof,  
the Director shall approve such diagram.

(7) If any contiguous owner fails to sign the agreement and, within the period mentioned in any such notice as is referred to in subsection (4), lodges with the Director an objection to any beacon or boundary adopted in the survey of such piece of land or to the diagram thereof, the Director may, if every person affected by such objection undertakes in writing the award of an arbitrator to be appointed by the Director as final and conclusive upon all matters in connection with any such beacon or

boundary and in regard to the cost of or incidental to such arbitration, appoint an arbitrator to determine such matters and costs, and the award of such arbitrator shall be final and conclusive.

(8) Any person affected by an objection who fails to give the undertaking referred to in subsection (7), if he was in Botswana upon the date upon which he was called upon to accept the award, may within one month, or if he was elsewhere on such date, may within three months thereafter, institute an action in the court to determine the matter, or if the State is affected by such objections, proceed to arbitration in respect of the matter under any law relating to the settlement of disputes by arbitration; and if he fails within such period to institute such action or to proceed to such arbitration, as the case may be, he shall be deemed to have agreed to such beacons, boundaries and diagram.

(9) When the boundary between two pieces of land is ill-defined another boundary may be substituted in a survey for registration purposes if the Director is satisfied that the substituted boundary is so close to the ill-defined boundary that no material alteration in the area of either piece of land will take place thereby and there is lodged with the Director an agreement, such as is referred to in subsection (2)(b) in respect of such boundary, signed by the owners of land contiguous thereto.

#### **12. Diagram of land surveyed under direction of Director**

(1) Section 11, other than subsections (7), (8) and (9) thereof, shall not apply in regard to the survey, under the direction of the Director, of any piece of land to which no title deed has been issued and which is not represented on any diagram registered in the Deeds Registry or Director's office, but before approving the diagram of any such land the Director, unless he considers that the rights of contiguous owners will not be adversely affected, shall cause a notice to be published in four consecutive issues of the *Gazette* and once every week in a newspaper circulating in Botswana stating that a diagram of such land is lying for inspection at the Director's office and that if no objection is received within 60 days from the first publication of such notice, such diagram will be approved by the Director.

(2) If within the period of 60 days aforesaid any owner of land contiguous to the land represented by the diagram lodges with the Director an objection to the diagram or to any beacon or boundary adopted in the survey thereof which cannot be resolved by agreement of the parties thereto, section 11(7) and (8) shall *mutatis mutandis* apply.

#### **13. Rectification of title deeds after determination of boundary dispute**

(1) Whenever a dispute in regard to any boundary or beacon of contiguous pieces of land is finally determined by the judgment of the court or by arbitration, the owners of any land affected by such judgment or award, or such of them as may be specially directed thereby, shall take such steps as may be necessary, in accordance with the law relating to the registration of deeds, either to procure a certificate of amended title to such land or to cause an endorsement to be made on the existing title deed thereof as the Director may direct; and the certificate or endorsement shall be based upon a diagram correctly representing the boundaries and beacons of such land as determined by the judgment or award.

(2) Any such judgment or award shall determine in what proportions the costs of any survey for the purpose of framing such diagram or otherwise giving effect to such judgment or award of such certificate or endorsement shall be borne by the owners of any land affected by such judgment or award.

(3) The Director shall furnish the Registrar with a description of any land in respect of which an amended title or an endorsement on the existing title is required in terms of subsection (1) and thereafter no registration of such land or any portion thereof or undivided share therein shall be effected in the Deeds Registry until an amended title thereto has been issued or the endorsement has been made.

#### **14. Endorsement of diagrams when correct position of beacon or boundary has been determined and agreed upon**

(1) Whenever any doubt or dispute arises in regard to any beacon or boundary of a piece of land the diagram of which is registered in the Deeds Registry and the true position of the beacon or boundary has been determined by survey and agreed by the owners concerned, the Director shall cause an endorsement to be made on the relative diagrams to the effect that the position of the beacon or boundary has been agreed by all contiguous owners.

(2) The provisions of subsection (1) shall likewise apply where-

(a) a beacon is erected by a land surveyor to replace a beacon which has been destroyed or disturbed; and

(b) differences exist as to the correct position on the ground of a curvilinear boundary (other than such boundary as is referred to in section 29).

(3) Sections 11 and 17(2) shall *mutatis mutandis* apply in all respects in regard to the survey and to all matters in connection therewith as if the beacon or boundary were a beacon or boundary of a piece of land as if referred to in section 11 or 17.

#### **15. Rules for arbitration**

In deciding what are the true and correct beacons or boundaries common to two contiguous pieces of land an arbitrator appointed under this Act shall take into consideration the circumstances of each case but shall generally be guided by the following principles-

(a) the original beacons of a piece of land, as erected or adopted at the original survey thereof, shall be deemed to define the true boundaries of such land as granted or transferred, notwithstanding that such beacons may not correspond with the original diagram or may not include the extent of land which the title deed of such land purports to convey;

(b) when well ascertained beacons have, for an uninterrupted period of not less than 30 years, been recognised by the parties to the dispute or their predecessors in title as the true and correct beacons, such beacons shall be taken to be original beacons:

Provided that no land which is clearly not included, nor intended to be included, in the title deed of a piece of land shall be included in a new diagram of that piece of land, although it may have been used or occupied for the period of prescription by the owner of such piece of land or his predecessors in title to the exclusion of others; or

(c) if any land included within the original beacons and boundaries of a grant has afterwards been included within the beacons and boundaries of a later grant, the right to the overlap conferred by the older grant shall, subject to the provisions of paragraph (b), prevail.

#### **16. Approval of diagram of portion of unsurveyed land**

No diagram of any portion of an unsurveyed piece of land registered in the Deeds Registry shall be approved by the Director until a survey has been made of the whole of such piece of land and a new title deed has been registered or the old title endorsed on the basis of such survey.

#### **17. Replacing incorrect diagram by new diagram after resurvey**

(1) Whenever it is alleged that the diagram of any land registered or filed in the Deeds Registry or Director's office (in this section referred to as the existing diagram) does not correctly represent the boundaries of such land, the owner thereof may apply to the Director for the cancellation of the existing diagram and the approval *in lieu* thereof of a new diagram of such land.

(2) Section 11 shall *mutatis mutandis* apply in regard to such new diagram and to all matters in connection therewith or with the survey upon which it is based, and it shall not be approved unless those provisions are complied with.

(3) A land surveyor performing the resurvey of land for the purpose of preparing a new diagram under this section shall, in addition to the other documents required by section 11 to be delivered or transmitted to the Director, deliver or transmit to him for the purpose of being filed or recorded in the Director's office, a report containing such information and illustrated by such explanatory plan as the land surveyor may deem useful or the Director may require.

[9 of 2011, s. 10(b).]

(5) If it appears from the resurvey that an existing diagram is correct, the Director shall endorse thereon a certificate that the land represented thereby has been resurveyed and that the existing diagram has been found correct and thereupon the beacons and boundaries of the land shall be deemed to have been lawfully established in accordance with section 28.

(6) Section 11 shall *mutatis mutandis* apply in the same manner as if such resurvey were a survey, and as if such endorsement were an approval of a diagram for the purposes of that section, and the endorsement shall not be made unless those provisions have been complied with.

#### **18. Resurvey of block of land other than township**

(1) Whenever-

(a) the owners of not less than one half of a section or block of land (other than land referred to in Part V) consisting of more than one registered piece of land apply to the Minister for a resurvey of such section or block; and

(b) the Director reports that the boundaries of the several pieces of land constituting the section or block are confused and need readjustment, the Minister may order that such section or block be resurveyed under the direction of the Director.

(2) No beacons or boundaries which have become lawfully established in accordance with section 28 shall be affected by any resurvey or any other act performed under this section.

(3) Whenever in the course of a resurvey ordered under this section a dispute arises as to the boundaries of any such pieces of land, the Director may give notice in writing to every person who is a party to such dispute that he proposes to appoint an arbitrator for the purpose of determining such dispute.

(4) Section 11(5) shall *mutatis mutandis* apply in regard to such notice.

(5) Any person referred to in subsection (3), if he was in Botswana upon the date when the notice was served upon him, may within one month, or, if he was elsewhere upon such date, may within three months thereafter, institute an action in the court to determine the dispute, or if the State is a party thereto, proceed to arbitration in respect thereof under the law relating to arbitration; and, if none of the said persons institutes any such action or arbitration proceedings within the said periods, the Director may appoint an arbitrator to determine the dispute, and the award of the arbitrator in regard to the dispute and to all costs thereof or incidental thereto shall be final.

(6) The costs of and incidental to any resurvey ordered under this section shall in the first instance be defrayed from the public revenue and the Minister may thereafter recover those costs in such manner as may be prescribed from each owner of any such piece of land in accordance with a scheme to be framed by the Director apportioning such costs among all such owners.

(7) Upon payment by the owner of any such piece of land of all costs due by him in respect of a resurvey ordered under this section, the Director shall cancel the existing diagram of such piece of land and shall issue to him a new diagram in place thereof.

(8) The Director shall not approve a general plan representing pieces of land based upon a resurvey under this section until a copy thereof has been available for inspection during a period of not less than six weeks at his office and at the office of the District Commissioner of the district within which such land is situate and until he has published in six consecutive issues of the *Gazette* and once every week during six consecutive weeks in a newspaper circulating in Botswana a notice stating his intention to approve such general plan and calling upon persons interested who object to such approval to lodge their objections with the Director:

Provided that the Director may approve any general plan without publishing the notice if every owner of any land affected by the resurvey has agreed in writing to the general plan or to the beacons and boundaries adopted in the resurvey or if the plan is in accordance with a judgment or award under subsection (5) in an action or arbitration proceedings to which every owner was a party.

(9) If within four weeks from the date of the last publication of such notice no objection is lodged by any person other than a person who was a party to an action or arbitration proceedings under subsection (5), the Director may approve such general plan and thereupon he shall, by notice published in the *Gazette*, declare that the general plan has been approved.

(10) If within the period of four weeks any objection is lodged, section 11(7) and (8) and the proviso to section 25(3) shall *mutatis mutandis* apply.

## **PART IV** **Division Survey (ss 19-23)**

### **19. Division diagrams**

(1) Whenever the owner of a surveyed piece of land desires to divide the same and to effect separate registration of one or more portions of such land in the Deeds Registry, each of the portions to be registered shall be surveyed and a diagram thereof shall be submitted for examination to the Director who shall approve every diagram prepared in accordance with the requirements of this Act:

Provided that if it is desired to effect a separate registration of the remaining extent of such piece of land it shall not be necessary so to submit a diagram of such remaining extent.

(2) Where separate registration of any portion referred to in subsection (1) is effected, the Director shall cause to be defined on the copy of the diagram of the land so divided belonging to the owner of the remaining extent and on the copy of the diagram registered in the Deeds Registry or on that filed in the office of the Director, the geometrical figure representing such portion, and shall cause to be deducted its numerical extent:

Provided that in any prescribed case the definition and deduction may be made on a general plan instead of on the diagram.

## **20. Rectification of errors ascertained by resurvey or division survey**

(1) If on the resurvey of any land or the survey of land for the purpose of division (in this section referred to as the resurvey), the numerical data derived from the resurvey are found to differ from those numerical data on the diagram of the land upon which any registration has been based, the Director shall-

(a) when the difference is beyond the prescribed limit of error, approve a diagram prepared in accordance with the resurvey as if the piece of land represented on the said diagram were a piece of land such as is referred to in section 11 or 17(1) to which sections 11 and 17(3) shall *mutatis mutandis* apply in regard thereto and to all matters in connection therewith, and every piece of land a beacon or boundary whereof has a bearing on the piece of land represented on the said diagram shall be deemed to be contiguous to such last mentioned piece of land for the purposes of section 11(2)(b);

(b) when the difference is not beyond the prescribed limit of error and he is satisfied that the resurvey has been not less accurately performed than the previous survey and that the positions of the beacons and boundaries adopted in both surveys are identical, approve a new diagram of the land, or a diagram of any portion thereof, prepared in accordance with the resurvey;

(c) when the difference is beyond the prescribed limit of error in respect of certain only of the beacons and boundaries, while the numerical data of the remaining beacons and boundaries either agree or do not differ beyond the said limit, approve a new diagram of the land or a diagram of any portion thereof prepared in accordance with the resurvey, if the provisions referred to in paragraph (a) have been complied with in regard to those beacons and boundaries the data whereof differ beyond the prescribed limit, and the conditions referred to in paragraph (b) are present in regard to all other beacons and boundaries:

Provided that the Director may at his discretion approve the diagram without compliance with section 11(2)(b) in respect of any beacon or boundary in regard to which he is satisfied that the position determined for such beacon or boundary is correct.

(2) Where the Director approves a new diagram of the whole piece of land, he shall transmit the approved diagram together with the prescribed documents to the Registrar in order that the Registrar may make the necessary endorsement on the relative title deed in accordance with the law relating to the registration of deeds, and thereafter no transfer, endorsement or any other act affecting the registration of any such land or portion thereof or undivided share therein shall be effected in the Deeds Registry until the endorsement has been made.

## **21. Division of land bounded by lake, etc.**

Where the edge of a lake or vlei, the property of the State, forms a boundary of any surveyed land and the owner thereof intends to divide such land and to place any beacon along or near such boundary for the purpose of effecting such division, notice in writing of such intention shall be given to the Director at least 20 days before the date of commencement of the survey for the purpose of such division.

## **22. Diagram of exact fraction of land**

When a surveyed piece of land which is held in undivided shares is divided for the purpose of partition, the Director may withhold his approval of a diagram purporting to represent an exact fraction of the total area of such surveyed piece of land until he is satisfied that such total area has been ascertained by a resurvey of the whole of such piece of land.

## **23. Reference marks**

(1) If, after a report from the Director, the Minister is satisfied that reference marks should be established in any township, village or settlement or any defined portion thereof to enable the positions of the corner points of all pieces of land therein to be accurately determined, he may order the erection and establishment by survey of such reference marks.

(2) The Director shall, for the purpose of obtaining information in connection with a report to the Minister in terms of subsection (1), consult the local authority concerned.

(3) Subject to subsection (5), the reference marks to be established shall be undertaken and carried out by the local authority concerned in consultation with the Director and such marks shall be of the type prescribed:

Provided that if no local authority has been established for the township, village or settlement in which such reference marks are to be erected or if there is a local authority which is not by law empowered to incur expenditure for the purpose, the Director shall cause such marks to be erected.

(4) The survey to be undertaken for the purpose of establishing such reference marks under subsection (1) shall be carried out under the direction and control of the Director and shall for all purposes be deemed to be part of and in continuation of the trigonometrical survey operations provided for in section 42.

(5) The owner of any property damaged by the placing of a reference mark shall be entitled to compensation for such damage.

(6) All costs of and incidental to the erection and maintenance of such reference marks, including any compensation payable under subsection (5), shall be borne by the local authority concerned; where the local authority is not by law empowered to incur such expenditure, such costs shall be borne by the Government.

(7) Every local authority within whose area of jurisdiction reference marks are established in terms of this section shall be responsible for the maintenance of such reference marks to the satisfaction of the Minister:

Provided that if the local authority fails to maintain any such reference mark, the Director may undertake any necessary work at the expense of such local authority.

(8) Whenever a local authority is established after the commencement of this Act, it shall be responsible for the maintenance of the reference marks which were erected and established within its area of jurisdiction before its establishment.

## **PART V**

### ***Townships, Villages and Settlements (ss 24-27)***

#### **24. Resurvey of townships, etc.**

(1) When the recognised boundaries of the pieces of land which compose a township, village or settlement do not conform with the boundaries represented on their respective diagrams or the general plan, the Minister may cause such township, village or settlement or any defined portion thereof to be resurveyed and a new general plan thereof to be prepared in accordance with such resurvey:

Provided that the resurvey of any township, village or settlement or any portion thereof falling within the area of jurisdiction of a local authority shall be carried out only after written application for such resurvey has been made to the Minister by the said local authority.

(2) Before any local authority applies to the Minister for a resurvey of any township, village or settlement, or portion thereof, falling within its jurisdiction, it shall, in consultation with the Director, cause a notice of such intended application for resurvey to be published in four consecutive issues of the *Gazette* and once every week during four consecutive weeks in a newspaper circulating in the district in which such township, village or settlement is situate and to be posted outside the office of the local authority of such township, village or settlement.

(3) If no local authority has been established for such township, village or settlement, or if there is a local authority which is not by law empowered to incur expenditure for the purpose, the Director shall, before any such resurvey is commenced, cause a notice of such intended resurvey to be published as aforesaid, and have the notice posted outside the office of the District Commissioner of the district.

(4) A resurvey under this section shall be based on reference marks established in terms of section 23:

Provided that any reference marks erected before the commencement of this Act, and conforming with the requirements of that section shall be deemed to have been established in terms of that section.

(5) The resurvey shall be carried out and the general plan be prepared under the direction of the Director by a land surveyor appointed by him:

Provided that where the township, village or settlement falls within the area of jurisdiction of a local authority, the local authority may, subject to the concurrence of the Director, appoint a land surveyor.

(6) No beacon or boundary which has become lawfully established in accordance with section 28 shall be affected by any resurvey or any other act performed under this section.

(7) All costs of and incidental to the resurvey shall, except in respect of State land, be borne by the local authority of the resurveyed township, village or settlement and, notwithstanding anything contained in any other law, the local authority may levy a special rate payable by the registered owners of land within the resurveyed area, in proportion to the value of the land (including non-rateable land other than State land) held in ownership by each, to cover the costs of and incidental to the resurvey of any portion thereof.

(8) The Minister, after consultation with the local authority concerned, shall determine the costs which shall be payable by the Government in respect of State land.

(9) For the purposes of subsection (7) "the value of the land" means the valuation of that land appearing in the valuation roll used for rating purposes by the local authority concerned, or in the absence of such valuation a valuation approved by the Minister after consultation with the local authority.

(10) If no local authority has been established for the township, village or settlement, or if there is a local authority which is not by law empowered to incur expenditure for the purpose, the owners of land (including the State) in the resurveyed area shall bear the costs of and incidental to such resurvey in a proportion to be determined by the Minister.

(11) Before a resurvey referred to in subsection (10) is commenced the owners, other than the State, shall deposit with the Minister an amount deemed by him to be sufficient to cover their proportionate amount of the costs.

(12) If their share of the actual costs of the survey is less than the amount deposited, the difference shall be refunded to them, and if such share is in excess of the amount deposited, the Minister may recover the difference from them by action in a competent court.

## **25. Approval of new general plan**

(1) The Director shall not approve a new general plan of a township, village or settlement or of a defined portion thereof resurveyed under section 24 until a copy thereof has during a period of six weeks been available for inspection at his office and at the office of the local authority within whose jurisdiction the area resurveyed is situate or, if there is no local authority, at the office of the District Commissioner of the district in which such area is situate and until notice of his intention to approve the same has been published by the Director in six consecutive issues of the *Gazette* and once every week during six consecutive weeks in a newspaper circulating in the district in which such area is situate, calling upon persons interested to lodge in writing at his office any objection they may have to the approval of the new general plan.

(2) If within four weeks from the date of the last publication of the said notice no such objection has been lodged, the Director may approve the new general plan and thereupon he shall by notice in the *Gazette* declare that the general plan has been approved.

(3) If within the said period of four weeks any objection to the new general plan is lodged, section 11(7) and (8) shall *mutatis mutandis* apply:

Provided that the Director may approve and make use of a general plan of such portion of the area resurveyed as are not affected by such objection, and generally may take steps in regard to such portions if no such objection has been lodged.

(4) The approval of a new general plan of an area resurveyed under section 24 shall have the effect of cancelling every preceding diagram or general plan, or portion of a diagram or general plan representing such area.

## **26. New general plan supersedes erroneous diagrams**

(1) Whenever a new general plan of a township, village or settlement or portion thereof has been approved under section 25, the Director shall furnish the Registrar with a list of all pieces of land shown



thereon, and thereafter no transfer, endorsement, or any other act affecting the registration of any such piece of land or portion thereof or undivided share therein shall be effected in the Deeds Registry until a diagram, agreeing with such new general plan, has been lodged and the relative title deed endorsed in accordance with such diagram.

(2) The owner of any piece of land may, on application to the Director, obtain a new diagram representing such piece of land on production of a certificate by the local authority or the Minister, as the case may be, to the effect that any amount due by such owner in terms of section 24(7) or (10) to (12) in respect of such piece of land has been paid by him.

(3) The Director shall on payment of the prescribed fee cause such new diagram to be prepared from the data recorded on such new general plan.

## **27. Alteration and cancellation of general plans**

(1) A general plan filed in the Director's office or registered in the Deeds Registry may be altered or amended by the Director for the purpose of rectifying errors in a survey.

(2) A general plan may be altered or amended by the Director to give effect to any scheme approved under the provisions of any written law relating to town planning:

Provided that no such amendment or alteration shall have the effect of altering any common boundary of pieces of land registered in the names of different persons without their prior agreement in writing.

(3) A general plan may-

(a) on the application of the owner of the land represented thereon, be totally or partially cancelled by the Director if no lot shown on the general plan has been transferred or if the applicant has re-acquired the unencumbered ownership thereof;

(b) be totally or partially cancelled by the Director in order to give effect to any scheme approved under any written law relating to town planning:

Provided that no such cancellation shall have the effect of altering the common boundaries between pieces of land registered in the names of different persons without their prior agreement in writing.

(4) Whenever a general plan is cancelled or altered under this section the Director shall inform the Registrar who shall make such alteration, amendments or endorsements on the relative title deeds as may be necessary.

## **PART VI**

### ***Beacons and Boundaries (ss 28-34)***

## **28. Beacons and boundaries lawfully established**

(1) Notwithstanding anything contained in any law, the position of any beacon or boundary deemed in terms of this section to have been lawfully established shall not be capable of being brought into question in any court and the Director or Registrar shall not accept for filing or registration any document which shows any beacon or boundary inconsistent with such position.

(2) A beacon or boundary shall be deemed to have been lawfully established-

(a) when its position is in agreement with the position thereof adopted in a resurvey and when a diagram based on such resurvey has been approved in terms of section 17 and is annexed to a certificate of amended title or is referred to in an endorsement made in terms of the law relating to the registration of deeds;

(b) when its position is in agreement with the position thereof adopted in an original survey and when a diagram based on such original survey has been approved in terms of section 11;

(c) when its position is in agreement with the position thereof adopted in a resurvey such as is referred to in-

(i) section 20(1)(a), or

(ii) section 20(1)(c) if the provisions of paragraph (a) of that subsection have been complied with in regard to such beacon or boundary;

and when a diagram based on such resurvey has been approved by the Director and registered in the Deeds Registry;

(d) when its position is in agreement with the position thereof adopted in a resurvey in terms of section 18 or 24 and when a general plan based on such resurvey has been approved;

(e) when its position is in agreement with an order of the court;

(f) when its position is in agreement with the position of a beacon or boundary established and entitled to recognition at the commencement of this Act, pursuant to any law or usage concerning the establishment or recognition of beacons and boundaries in force in Botswana prior to such date.

(3) Nothing in this section shall be deemed to prevent the acquisition by prescription of any right to or interest in land.

## **29. Removal of uncertainty in description of curvilinear boundary**

(1) When the particular part of a physical feature constituting a curvilinear boundary of any piece of land is not described in writing and in unequivocal terms on the original diagram of such land, and-

(a) the owner is desirous of having any uncertainty or ambiguity regarding the description of such boundary removed; or

(b) when a diagram representing the whole of such piece of land or any subdivision thereof which abuts on such physical feature has been submitted for approval and the Director deems it necessary that the aforesaid uncertainty or ambiguity shall be removed prior to approval of the diagram and has called upon the owner to take steps to that end, such owner shall lodge with the Director a document (in this section referred to as "the agreement") as far as practicable in accordance with the form of the Schedule, setting out in clear terms, as prescribed, which part of such feature is acknowledged as being the boundary of such piece of land.

(2) The agreement shall be independent of any determination by survey of the position on the ground of such curvilinear boundary and shall be signed by the owner of such piece of land or by his duly authorised agent, and, subject to the second proviso to section 11(2)(b), by every owner of land contiguous thereto and separated therefrom either wholly or in part by such physical feature (in this section referred to as a "contiguous owner") or by his duly authorised agent, and by two competent witnesses to each signature:

Provided-

(i) that it shall not be necessary for a contiguous owner to sign the agreement if the Director is satisfied that no prejudice will result to such owner from the acceptance of such agreement; and

(ii) any agreement purporting to establish the middle of a river as the boundary shall not be deemed to be valid until the Director, after reference to the Minister, has endorsed such agreement to the effect that no evidence has been adduced which may rebut any presumption that such piece of land extends to the middle of a river.

(3) Section 11(4), (5) and (6) shall, *mutatis mutandis*, apply in respect of the agreement.

(4) When the agreement has been signed in accordance with this section and has been accepted by the Director, no diagram of such piece of land or subdivision thereof shall thereafter be approved unless it is in accordance with such agreement.

(5) If any contiguous owner has failed to sign the agreement and has within the period mentioned in any such notice as is referred to in section 11(4) lodged with the Director an objection to the terms of the agreement, the matter shall be laid before a commission constituted in terms of subsection (6) for a description of the boundary in question.

(6) The commission referred to in subsection (5) shall consist of the Minister or a person appointed in writing by him who shall be chairman, the Director or a person appointed in writing by him and the Registrar.

(7) The commission shall inquire into the matter and shall furnish a description of the boundary in question according to the finding arrived at by the majority of the members after due consideration of all the documentary evidence available from the Director's and the Deeds Registry records.

(8) The owners affected by the agreement shall be notified by registered letter of the finding of the commission and, if, within a period of 30 days after the date of posting of such registered letter (or, in the case of an owner not at that time in Botswana, 60 days), any such owner fails to lodge formal written objection against the finding and thereafter within a further period of 30 days to take steps to

institute an action to determine the matter, such owner shall be deemed to have consented to the description decided upon by the commission.

(9) A description deemed to have been consented to in accordance with subsection (8) shall not be capable of being disputed in any court of law, and no diagram shall be approved which is not in accordance with it.

(10) On the agreement coming into force, the diagrams of each property affected filed in the Deeds Registry as well as the owner's copy thereof, when available, shall be endorsed accordingly.

### **30. Manner and costs of erecting beacons for survey purposes**

(1) All beacons erected for the purpose or in consequence of any survey or resurvey of land under this Act shall be substantially and durably constructed under the supervision of, and in the position determined by, a land surveyor.

(2) The materials of which such beacons shall be composed and the manner in which they shall be erected shall be prescribed.

(3) Subject to the proviso to section 32(5), the cost of erecting such beacons, including the cost of determining their positions of survey, when necessary shall be borne by the owner of the land so surveyed or resurveyed who shall be entitled to recover from the owner or owners of contiguous land a proportionate share of the cost of determining the position of and erecting any joint beacon.

### **31. No poles, etc., to be placed near geodetic station**

(1) Except with the consent of the Director, a person shall not place any fence post or fence anchor or any other erection or make any excavation within 0.09144m of any geodetic station.

[9 of 2011, s. 12.]

### **32. Repair or re-erection of beacons**

(1) Every owner of land shall maintain in proper order and repair, in accordance with such requirements as may be prescribed, any beacon or mark defining a corner point of his land whether such beacon or mark has been erected for the purpose of or in connection with a survey or resurvey of such land under this Act or any prior law, for the purpose of or in connection with the survey or resurvey of any land contiguous thereto.

(2) If any such beacon or mark has not been maintained in proper order and repair or has been removed or obliterated, the Director may, by delivery or by transmission in a registered letter through the post, serve upon the owner of every piece of land whereof such beacon or mark forms a corner, a notice in writing calling upon him to restore such beacon or mark to the prescribed condition or to re-erect it in the prescribed manner, as the case may be:

Provided that-

(i) the re-erection of any such removed or obliterated beacon or mark shall be carried out by a land surveyor;

(ii) the provisions of this subsection shall not apply to beacons which were removed before the commencement of this Act.

(3) If such beacon or mark is not so restored or re-erected within six weeks of the date upon which any such notice was so delivered or posted, the Director may cause such beacon or mark to be restored or re-erected by a land surveyor.

(4) The Director may at the request of the owner referred to in subsection (3) extend the period of six weeks.

(5) The owners of all such pieces of land shall be liable in equal shares for the costs of the repair, restoration or re-erection of any beacon or mark and the Director may recover from every such owner his share of all costs incurred by the Director under subsections (3) and (4):

Provided that if any such owner or the servant or agent of any such owner damages, removes or obliterates any such beacon or mark, the entire cost of the repair, restoration or re-erection of the beacon or mark shall be borne by such owner.

### **33. Offences and compensation**

(1) Any person who, without lawful excuse (the proof whereof shall lie upon him)-

(a) alters, moves, disturbs or wilfully damages or destroys any beacon, bench mark, reference mark, signal or geodetic station intended to be permanent and erected for the purpose of or in connection with any survey operations, whether the beacon, bench mark, reference mark, signal or geodetic station is upon his own land or not; or

(b) erects any beacon except under the supervision of a land surveyor, whether his intention is to alter the boundary line of any piece of land or to cause deception as to that boundary line or not, shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding 12 months, or to both.

(2) The removal or disturbance of any such beacon, mark or signal for the purpose of erecting another beacon, mark or signal in its place shall not constitute a lawful excuse under this section unless a land surveyor personally superintends the removal or disturbance and the erection of the other beacon, mark or signal.

(3) For the purpose of awarding compensation under the Criminal Procedure and Evidence Act (Cap. 08:02) in respect of any damage caused by such offence, any beacon in connection with which any such offence was committed shall be deemed to be the property of any person upon whose land or upon a boundary of whose land such beacon was situate, and any bench mark, reference mark or geodetic station in connection with which any such offence was committed shall be deemed to be the property of the Director.

### **34. Authority to remove beacons**

Any person who, for the purpose of carrying out any work which he may lawfully perform desires to remove or disturb any beacon or mark erected in connection with the survey of land shall apply to the Director for authority to do so and the Director may, at the expense of such applicant, employ any land surveyor to effect the removal or disturbance and subsequent replacement of such beacon or mark or the erection or placing of any other mark in such manner as the Director may direct.

## **PART VII**

### ***General Plans and Diagrams (ss 35-41)***

### **35. Manner of preparing diagram**

Every general plan or diagram submitted for the approval of the Director shall be prepared in accordance with the regulations and the numerical and other data recorded thereon shall be within the prescribed limits of consistency:

Provided that the Director may approve a diagram prepared before the commencement of this Act, in accordance with the usage in force at the time of such preparation.

### **36. No registration of land without approved diagram**

No general plan or diagram of any piece of land shall be accepted in the Deeds Registry in connection with any registration therein of such land unless such general plan or diagram has been approved by the Director:

Provided that, in the event of such approval being contingent upon any act being subsequently performed in the Deeds Registry, the Director may approve such general plan or diagram provisionally and, upon the performance of that act in the Deeds Registry, the Director may approve such general plan or diagram provisionally and, upon the performance of that act in the Deeds Registry, the Director shall finally approve such general plan or diagram when submitted to him.

### **37. Signing of diagrams**

No general plan or diagram shall be approved by the Director unless it is prepared under the direction of and signed by a land surveyor:

Provided that the Director may sign and approve a general plan or a diagram framed by his direction from general plans, diagrams or surveys records filed in his office or registered in the Deeds Registry, without the signature thereon of the land surveyor or land surveyors who signed such general plans, diagrams or survey records.

### **38. Cancellation of diagram in case of overlap**

(1) If the figure of the diagram of a piece of land entirely overlaps the figure of the diagram of another piece of land, the Director may, at the request of the owner of the last-mentioned piece of land, cancel the diagram thereof.

(2) The diagram so cancelled shall forthwith be submitted to the Registrar who shall make such amendments in his registers and such alteration or substitution of any title deed as may be necessary.

(3) The Director shall not exercise any power conferred upon him by this section unless the Registrar certifies that the owner making such request has applied to him for an alteration or substitution of his title deed of the land represented on the diagram to be cancelled and that every person holding a registered interest in such land has given his consent to the alteration or substitution of such title deed.

#### **39. Diagram for consolidated title**

(1) The Director may approve a diagram which has been compiled without any resurvey from two or more diagrams representing several pieces of land and which has been prepared for the purpose of obtaining a consolidated title thereto.

(2) The several diagrams forming the component parts of a new diagram which has been framed for the consolidation of title shall, upon the issue of the certificate of such consolidated title, be transmitted by the Registrar to the Director for cancellation.

#### **40. Registrar and owner to be informed of incorrect diagram**

If the Director is satisfied that the diagram of any piece of land entirely fails to represent such land or misrepresents it to such an extent that damage or loss might result to any person who is or may become interested therein, he may give notice of such fact to the Registrar and to the owner of such piece of land and thereafter no further registration of such piece of land or of any portion thereof or undivided share therein shall be effected in the Deeds Registry until a new diagram thereof has been approved and a certificate of amended title thereto has been issued or the title deed thereof has been endorsed in accordance with such new diagram under the law relating to the registration of deeds:

Provided that if the Director is unaware of the address of the owner of such piece of land, a publication of such notice in three consecutive issues of the *Gazette* and once every week during three consecutive weeks in a newspaper circulating in Botswana shall be deemed to be sufficient notice to such owner for the purposes of this section.

#### **41. Correction of registered diagram**

The Director may correct any error in the numerical data, figure or wording of a diagram registered in the Deeds Registry:

Provided that if such correction affects the extent or designation of the land represented by such diagram, the Director shall notify the Registrar of such correction and the Registrar shall thereupon amend the relative title deed and registers in his Registry in accordance with such corrected diagram and, before effecting any further registration of such land or any portion thereof or undivided share therein, shall likewise amend the relative duplicate title deed belonging to the owner of the land.

#### **41A. Survey of layout of infrastructure**

(1) Every utility company shall, within three months of completion of a project, deposit an engineering survey lay out of its infrastructure with the Director for archiving.

[9 of 2011, s. 13.]

### **PART VIII** **Miscellaneous (ss 42-47)**

#### **42. Geodetic surveys, etc.**

(1) The Director shall cause to be conducted such trigonometrical, topographical and level surveys, and such geodetic and geophysical operations as the Minister may direct, and shall take charge of and preserve all records of such surveys or operations.

[9 of 2011, s. 14.]

(2) Any person who intends carrying out any mapping over an area exceeding one hectare, or making a levelling line exceeding five kilometres or to carry out any aerial photography for use in mapping or similar purpose shall, before carrying out the same, give the Director written notice of not less than one month.

(a) submit to the Director for inspection such records or aerial photographs as the Director may specify ;

(b) supply to the Director, at a prescribed cost, such copies of the records or aerial photographs as the Director may require; and

(c) permit the use of all data derived from the records and aerial photographs in national mapping and development programmes.

[9 of 2011, s. 14.]

#### **43. Powers of entry, etc., upon land**

(1) The Director, any person generally or specially deputed in writing by him and any land surveyor may, for the purpose of performing any duties under this Act or any other law-

(a) enter upon any land with such assistants or servants, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of those duties;

(b) place or erect any permanent beacon, bench mark, reference mark or geodetic station, or any temporary flag, signal or other mark upon such land;

(c) make use of any natural material upon which no work has been expended and, except within a township, village or settlement, of any water, whether conserved or not, found upon or in such land;

(d) cut any vegetation growing wild in the vicinity of any such beacon, mark, geodetic station, flag or signal for the purpose of enabling observations to be made thereto or therefrom; and

(e) enter at all reasonable hours any building or enclosed place:

Provided that-

(i) reasonable notice of the intention to exercise any of the powers conferred by this section shall be given to the owner or occupier of such land except when such powers are exercised in carrying out any provision of section 24, and

(ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section, and such owner or occupier shall be entitled to compensation for any damage caused to or in any building or enclosed place, and for any unreasonable damage caused to any other property belonging to such owner or occupier.

(2) Any person who in any way whatsoever wilfully prevents, obstructs or impedes the exercise of any of the powers conferred by subsection (1), or who moves, obscures or destroys any flag, peg, signal or other mark of a temporary nature lawfully placed on such land in connection with any surveying operations before the completion of such operations, shall be guilty of an offence and liable to a fine not exceeding P50 or, in default of payment, to imprisonment for a term not exceeding one month.

(3) The Minister may require that a servitude in favour of the Government, protecting any permanent beacon, bench mark, reference mark or geodetic station, and ensuring an unobstructed view to and from any other such beacon, mark or station shall be granted by the owner of any land upon or near which any such beacon, mark or station is situate, and cause such servitude to be registered against the title deed of such land.

(4) The costs of the registration of such servitude and reasonable compensation for any depreciation in the value of the servient tenement by reason of the establishment of such servitude shall be borne by the Government.

#### **44. Act binding on State**

This Act shall be binding on the State in so far as any land surveyed or resurveyed or dealt with thereunder is unalienated State land or land which has been alienated and subsequently reacquired by the State, and the Minister shall, for the purposes of this Act, be deemed to be the owner of any such land.

#### **45. Savings as to railway or irrigation surveys and plans relating to mining titles**

(1) This Act shall not apply to-

(a) such surveys as may, in accordance with any law, be performed by mine surveyors;

(b) surveys for purposes of railway construction or purposes incidental thereto, performed by officers of any railway authority with the approval of the Minister; or

(c) surveys carried out by officers of the Ministry of Works, Transport and Communications in the performance of their duties,

so long as any such survey is not used for the purpose of effecting the registration of any land in the Deeds Registry or the definition of any boundary of any land.

(2) Nothing in this Act shall be construed as rendering necessary the submission, lodging or use of a diagram where, under the law relating to mining titles, the use of a sketch plan or other plan is permitted or prescribed.

(3) Nothing in this Act shall be construed as repealing or otherwise modifying the provisions of the Mines and Minerals Act (Cap. 66:01).

#### **46. Regulations**

The Minister may, by statutory instrument, make regulations generally for carrying into effect the provisions of this Act and, in particular and without prejudice to the generality of the foregoing such regulations may-

- (a) prescribe anything which is to be prescribed under this Act;
- (b) provide for the fees to be paid by an owner of land for any survey of such land, including any records relating to such survey, the manner in which and the person by whom such fees may be taxed, the costs of such taxation, and by whom they shall be borne;
- (c) prescribe the manner in which surveys shall be performed, and the manner and form in which the records of such surveys shall be prepared and furnished to the Director;
- (d) prescribe the degree of accuracy to be obtained and the limit of error to be allowed in surveys and resurveys of land;
- (e) prescribe the diagrams and general plans required in connection with the registration of any land in the Deeds Registry, the manner of preparing such diagrams and general plans, the information to be recorded thereon, and the number of such diagrams and general plans to be supplied;
- (f) prescribe the form and dimensions of beacons, reference marks, bench marks and geodetic stations, the manner of marking the same for identification, and the manner of their construction, erection, protection, maintenance and repair;
- (g) prescribe the procedure to be followed in arbitration proceedings under this Act, and the powers and duties of arbitrators appointed under this Act;
- (h) prescribe the manner in which cadastral and other surveys of land shall be based upon the tertiary triangulation where such exists;
- (i) provide for remuneration to be paid by the Government in respect of any survey operations in which a land surveyor at the request of the Director elects to make use (in accordance with the provisions of any regulation framed under paragraph (h)) of any secondary triangulation station;
- (j) prescribe the manner of resurveying pieces of land in any township, village or settlement, or any part thereof, or sections of blocks of land other than such pieces of land, for the purpose of readjusting the boundaries and establishing the beacons thereof, and the manner of recovering the costs of such resurveys;
- (k) prescribe the steps to be taken by the Director to test the accuracy of surveys the results of which are recorded on diagrams which have been, or are intended to be, registered in the Deeds Registry, and in the event of such surveys being inaccurate, to cause correct diagrams to be framed and the relative title deeds to be amended;
- (l) provide for the testing of surveying instruments and of measuring tapes to be used in the survey of land; and
- (m) prescribe the fees to be charged in respect of any act or matter required or permitted to be performed or dealt with in or in connection with the Director's office.

#### **47. Definition of units of land measure in Botswana**

The following units of land measure shall be recognised in Botswana, that is to say-

- (a) the metre as defined in the Weights and Measures Act (Cap. 43:06);
- (b) the English foot, which is equal to 0,304 799 472 metre;
- (c) the Cape foot, which is equal to 0,314 855 575 metre;
- (d) the Cape rood, which is equal to 3.7782669 metres;
- (e) the morgen, which is equal to 0.856518047 hectares;
- (f) the acre, which is equal to 0.4046842 hectares; and
- (g) the hectare, which is equal to 2.47106238 acres.

**SCHEDULE**  
**AGREEMENT AS TO BEACONS AND BOUNDARIES**  
(section 11)

We, the

undersigned, (a)

1 ..... (b) .....  
owner of ..

2 .....  
owner of ..

3 .....  
owner of ..

4 .....  
owner of ..

5 .....  
owner of ..

and ..... owner of the piece of land under survey called .....

..... certify that we have inspected or are aware of the positions of the  
beacons and boundaries common to our said properties in the survey of the last-named piece of land  
by Mr. Surveyor .....

And we declare that we agree and consent to the positions of the beacons and boundaries as  
described and represented on the figure appearing on the opposite page and consent to a diagram  
being framed in accordance therewith.

Date                      Signature                      Beacons and boundaries indicated on  
figure on opposite page and hereby  
agreed to                      Witnesses to  
Signatures



(c) and (d)

(e)

(f)

1 .....

...

2 .....

...

1 .....

...

2 .....

...

1 .....

...

2 .....

...

1 .....

...

2 .....

...

NOTES-

(a) Names in full, clearly written in capital letters.

(b) Names of contiguous properties.

(c) Only one signature to be written within each compartment.

(d) Signatures on behalf of estates, companies, municipalities, or similar bodies must be

duly authenticated by attachment of letters of administration, certified copies of resolutions of boards or councils or other similar documents. Signatures on powers of attorney must be accompanied by the actual powers or certified copies. Original documents will be returned after being noted thereon by the Director.

(e) Where a river forms the boundary the left bank, right bank, or middle of the river (as the case may be) must be indicated and signed for.

(f) Two witnesses are required for each signature.

The page containing the figure referred to in the agreement must be headed-

"Figure representing Land under Survey and Common Beacons and Boundaries of Contiguous Properties".

At the foot the following note should be made-

"NOTE- This page must be signed and dated by the surveyor performing the survey and the beacons and boundaries must be designated on the figure so as to correspond with the beacons and boundaries agreed to on the opposite page".