

CHAPTER 74:01
BOTSWANA POWER CORPORATION
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An Act to provide for the establishment of a corporation to be known as the Botswana Power Corporation for the generation and supply of electric power and to provide for matters incidental thereto and connected therewith.

[Date of Commencement: 30th June, 1970]

PART I

Preliminary (ss 1-2)

1. Short title

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

2. Interpretation

In this Act, unless the context otherwise requires-

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

"financial year" means the year ending on the 31st March in each year;

"Government electricity undertakings" means works established and arrangements concluded by the Government for the purpose of supplying electricity to communities and enterprises in Botswana;

"main transmission lines" means all cables and overhead lines, whether constructed or due to be constructed, for the transmission of electricity from a generating station to any other generating station or to a substation, together with any step-up or step-down transformers and switch-gear necessary to and used for the control of such cables or overhead lines, and the buildings, or such part thereof as may be required to accommodate such transformers or switch-gear, which the Minister may declare by notice published in the *Gazette* to be main transmission lines;

"undertaking" means any business for the supply of electricity to the public.

PART II

Establishment, Constitution and Membership of the Corporation (ss 3-7)

3. Establishment of the Corporation

(1) There is hereby established a Corporation to be known as the Botswana Power Corporation.

(2) The Corporation shall be a body corporate capable of suing and being sued in the name of the Botswana Power Corporation and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

4. Constitution

(1) The Corporation shall consist of a chairman and not less than six nor more than eight other members, who shall be appointed by the Minister by notice published in the *Gazette*.

(2) In making such appointments the Minister shall take into account the desirability of such interests as are affected by the Corporation's activities being represented.

(3) A person shall be disqualified from being appointed or being a member of the Corporation-

- (a) if he is a Member of the National Assembly, or is an employee of the Corporation; or
- (b) if he has been declared insolvent or bankrupt under any law in any country and has not been discharged, or has made a composition with his creditors and has not paid his debts in full.

5. Resignation and removal from office

The chairman and any other member of the Corporation may, if not a public officer,

resign his office by notice in writing addressed to the Minister, and may be removed from office by the Minister if he-

- (a) ceases to hold the office by virtue of which he was appointed;
- (b) becomes of unsound mind;
- (c) is declared insolvent or bankrupt under any law in force in any country;
- (d) suspends payment of his debts or compounds with his creditors;
- (e) is absent from three consecutive meetings of the Corporation without such reason as appears to the Minister to be sufficient;
- (f) is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
- (g) is guilty of serious misconduct in relation to his duties as chairman or member of the Corporation; or
- (h) in the case of a person possessed of professional qualifications, is disqualified or suspended, otherwise than at his own request, from practising his profession in Botswana or in any other country by order of any competent authority made in respect of him personally.

6. Tenure of office

(1) A member of the Corporation, other than the chairman, shall hold office for such period not exceeding four years, as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for reappointment:

Provided that in appointing members of the Corporation the Minister shall specify such periods of appointment that the periods of appointment of not more than one third of the members shall expire in any one year.

(2) The chairman of the Corporation shall hold office as chairman for a period of three years, and may be reappointed for a further period of three years.

(3) The Corporation shall once in every year elect from among its members a vice-chairman who shall hold office as vice-chairman for a period of one year.

7. Payment of members

The Corporation shall pay to the members thereof such remuneration, fees and allowances for expenses as may be approved by the Minister.

PART III

Meetings and Proceedings of the Corporation (ss 8-10)

8. Presiding officer

The chairman, or in his absence the vice-chairman, or in the absence of both, a member elected by the Corporation, shall preside at all meetings of the Corporation, and the vice-chairman or person presiding at any meeting shall with respect to such meeting or any business transacted thereat have all the powers of, and be deemed to be, the chairman of the Corporation under this Act.

9. Meetings

(1) The Corporation shall hold ordinary meetings as and when necessary, so however, that ordinary meetings are held at intervals not exceeding three months.

(2) Ordinary meetings of the Corporation shall be convened by the chairman at such times and at such places as he may in his discretion deem fit.

(3) The chairman, or in his absence the vice-chairman, shall at any time convene a special meeting of the Corporation upon receipt of a requisition signed by two members calling upon him to do so, and such special meeting shall be held not later than one month after receipt of such requisition.

(4) The chairman shall have a casting as well as a deliberative vote; subject thereto, the decision of the majority of the members present and voting at any meeting of the Corporation shall be deemed to be the decision of the Corporation.

(5) Any member of the Corporation who has an interest, or whose spouse has an

interest, in any company or undertaking with which the Corporation proposes to make a contract, or has an interest in any contract which the Corporation proposes to make, shall disclose the nature of his interest, and shall not vote or take any part in the proceedings of the Corporation relating to such contract.

(6) At any meeting of the Corporation a quorum shall be constituted by not less than one half of the members, including the chairman, of the Corporation.

(7) No act, decision or proceeding of the Corporation shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any member of the Corporation being defective, if the act was done or authorized or the decision was taken 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.

(8) The Corporation may from time to time make standing orders providing for the regulation of-

- (a) the meetings of the Corporation;
- (b) the conduct of its business and other operations in carrying out its functions; and
- (c) the duties of its officers, employees and agents.

10. Signification of documents

All documents made by, and all decisions of, the Corporation may be signified under the hand of the chairman of the Corporation, or the secretary to the Corporation, or any member or senior officer of the Corporation generally or specially authorized in that behalf.

PART IV

Officers, Employees and Agents of the Corporation (ss 11-12)

11. Appointment of officers and employees

(1) The Corporation shall, with the approval of the Minister, appoint a chief executive officer on such terms and conditions as it may determine.

(2) The Corporation shall appoint a secretary to the Corporation, who shall perform such duties as the Corporation may determine.

(3) The chief executive officer shall-

- (a) be a person who is qualified by experience and training and has demonstrated that he is competent to manage and operate the undertakings of the Corporation;
- (b) be the chief executive of the Corporation, and shall, subject to such direction on matters of general policy as may be given by the Corporation, be charged with the direction of the business of the Corporation and of its administration and organization and also with the control of the employees of the Corporation;
- (c) not be or vote as a member of the Corporation but shall, unless the Corporation in any particular instance decides otherwise, be entitled to attend its meetings and participate in its discussions.

(4) The Corporation shall, on consideration of the recommendations of the chief executive officer, from time to time determine the staff deemed necessary for the proper discharge of the Corporation's functions and the terms and conditions of employment.

(5) The appointment and dismissal of all persons to or from positions designated by the Corporation as held by senior officers shall be made by the Corporation on consideration of the recommendations of the chief executive officer.

(6) The appointment and dismissal of all other staff shall be made by the chief executive officer, or such senior officer as he may delegate to perform this function.

(7) The Corporation may-

- (a) grant pensions, gratuities or retiring allowances to any officers or employees and may require such officers and employees to contribute to any pension or contributory schemes;
- (b) for the benefit of its officers and employees establish and make contributions to any pension or superannuation fund or medical fund;

- (c) from time to time appoint and employ upon such terms and conditions as it may think fit such agents and contractors as it may deem necessary.

12. Delegation to committee

The Corporation may, by resolution, delegate to any committee of the Corporation the exercise of any of the powers which the Corporation is authorized by this Act to exercise either generally or in any particular case.

PART V

Functions, Powers and Duties of the Corporation (ss 13-16)

13. Functions and powers

(1) The functions of the Corporation shall be the generation, transmission, supply and distribution of electricity in areas approved by the Minister in terms of legislation relating to the supply of electricity.

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

- (a) acquire, construct, install, assemble, repair, maintain, operate or remove electrical generating stations, main and sub-transmission lines, distribution lines, transformer stations, electrical appliances, fittings and installations;
- (b) acquire and use any kind of property, undertaking, right or privilege and dispose of the same to the Government or any person other than a member, officer or employee of the Corporation, or any agent or contractor, appointed or employed by the Corporation;
- (c) generate or acquire electricity;
- (d) for the purpose of the efficient co-ordination of bulk supplies, enter into agreements in connection with the operating of generating stations which are inter-connected with the main transmission lines;
- (e) supply or sell electricity in bulk or otherwise to such authorities, bulk users, or other persons or classes of persons as it may decide;
- (f) enter into such contracts as may be necessary for the performance of its functions and duties;
- (g) construct, or cause to be constructed, such works, houses, offices and other buildings and structures as it may deem necessary or expedient for the performance of its functions and duties;
- (h) purchase, take on lease or otherwise acquire or construct or cause to be constructed, such tools, appliances, machinery, plant and equipment as it may deem necessary or expedient for the performance of its functions and duties;
- (i) sell, exchange, lease, dispose of, turn to account or otherwise deal with any of its assets or any part thereof, whether movable or immovable, not required for its purposes:
Provided that the Corporation may not sell any of its immovable property without the approval of the Minister responsible for finance;
- (j) invest from time to time, in such manner as it may deem fit, such moneys held by it as may be surplus to its immediate requirements, subject to the approval of the Minister responsible for finance;
- (k) insure with any company or person against any losses, damages, risks or liabilities which the Corporation may incur;
- (l) purchase or sell coal or other fuel, steam, water or other materials and stores used in the performance of its functions;
- (m) sell by-products produced in the performance of its functions;
- (n) sell, hire or otherwise dispose of electrical appliances and fittings;
- (o) carry on any activity which is reasonably requisite or convenient for, or in connection with, the discharge of its functions under this Act;

- (p) enter, upon such security as it may deem sufficient, into agreements for the loan of money to any person in its employ to enable him to purchase motor or other vehicles required by him for the purposes of his employment;
- (q) give guarantees for the repayment of money lent by any other person to a person in its employ to enable him to purchase such vehicles as are referred to in paragraph (p);
- (r) give guarantees for the repayment of up to 25 percent of the amount of moneys lent by a building society, or other financial institution approved by the Minister, for the purchase or construction of a dwelling house, to any person in the employ of the Corporation who is a member of the Corporation's superannuation scheme.

14. Co-operation with authorities

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

15. 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.

16. Power of Minister to give directions

The Minister may, after consultation with the Corporation, give to the Corporation such 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 this Act nor with the contractual or other legal obligations of the Corporation, and the Corporation shall give effect to any such directions.

PART VI

Finances (ss 17-22)

17. Principles of financial operations

(1) It shall be the duty of the Corporation to conduct its affairs on sound commercial lines and, in particular, so to carry out its functions under this Act and so prescribe the charges payable in respect of the supply by the Corporation of electricity as to ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable return measured by taking its net operating income as a percentage of the fair value of its fixed assets in operation plus an appropriate allowance for its working capital.

(2) For the purposes of this section, "net operating income" means the amount of income remaining after subtracting from total operating revenues all charges which in accordance with generally acceptable accounting principles are chargeable to revenue account, including appropriate provisions for depreciation of assets, adequate maintenance and taxes, but before deducting interest and other charges on borrowing or taking into account non-operating income and expenditure.

(3) In determining what constitutes a reasonable return, all pertinent economic and financial considerations shall be taken into account, which shall include but not be limited to the need for net operating income in an amount sufficient-

- (a) to meet interest payments on borrowings;
- (b) to provide for repayments to be made each year in respect of loans incurred by the Corporation to the extent to which such repayments exceed the year's provision for depreciation charged to revenue account;
- (c) to provide a reasonable proportion of the funds needed for expanding the Corporation's activities and improving its services;
- (d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Corporation deems it necessary to establish such reserves; and
- (e) to make dividend payments to the Government in respect of its equity interest in the

Corporation if and to the extent deemed appropriate by the Corporation, after consultation with the Minister and the Minister responsible for finance and having regard to the future financial requirements of the Corporation.

18. Fixing of tariffs

(1) The Corporation shall, with the approval of the Minister, which shall not be unreasonably withheld, prescribe the tariffs at which it supplies electricity so as to ensure that it is able to comply with the provisions of section 17.

(2) The Corporation may prescribe different tariffs or methods of charge for different persons or classes of persons and for different areas:

Provided that there shall be no unreasonable discrimination or preference in the prescribing of such tariffs or methods of charge.

19. Borrowing powers

(1) In order to enable the Corporation to discharge its functions under this Act and to meet its obligations, it may borrow on such terms and in such currencies as may be agreed between it and any lender, such sums as it may require, subject to the approval of the Minister responsible for finance.

(2) The Corporation may charge its assets, undertakings and revenues with the repayment of any money borrowed together with interest thereon and may issue debentures, bonds or other securities in order to secure the repayment of any money borrowed together with interest thereon and may do all other things necessary in connection with or incidental to such borrowings as are authorized by this section, subject to the approval of the Minister responsible for finance.

20. Vesting of property in the Corporation

(1) Any properties, assets, rights, debts, liabilities and obligations of the Government, and the benefit and burden of all contracts made by or on behalf of the Government, which are part of or concern or relate to the Government electricity undertakings may, with the consent of the Corporation, be transferred to and vest in the Corporation as hereinafter provided on terms and conditions agreed to by the Corporation.

(2) The Minister may from time to time by order published 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, concern or relate to the Government electricity 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 of the contracts so designated shall vest in the Corporation.

(3) For the purposes of subsection (4), "the appropriate date" means, in respect of any loan agreement made between the Government and any person whereby money was, or is to be, borrowed by the Government and used for or in connection with the Government electricity undertakings, the date of the vesting of such loan agreement in the Corporation by virtue of the foregoing provisions of this section.

(4) The Corporation shall pay to the Government in such manner and on such date, or dates, as the Minister, with the concurrence of the Corporation and the Minister for the time being responsible for finance, may from time to time specify, any amount expended, or advanced, by the Government on or in connection with the Government electricity undertakings, comprising-

- (a) all amounts repaid, in respect of capital or interest, by the Government to any person before the appropriate date under any loan agreement to which subsection (3) applies;
- (b) all amounts disbursed, or to be disbursed, by the Government in repayment of any other loan raised, or to be raised, by the Government, and interest thereon, to the extent to which such loan has been or will be applied to the Government electricity undertakings, which before the date specified in a designation pursuant to subsection (2) had not been off-set by an amount, or amounts, credited to the Consolidated Fund

- for that purpose;
- (c) amounts equal to the outstanding debit balance of any advances made by the Government and all costs incurred by the Government as a result of making such advances; and
 - (d) any other amounts paid, or to be paid, by the Government, which before the date specified in a designation pursuant to subsection (2) had not been off-set by an amount, or amounts, credited to the Consolidated Fund for that purpose.

(5) If, within one month from the date specified by the Minister under subsection (4) for the payment of any amount payable by the Corporation to the Government under that subsection, the Corporation fails to pay such amount, it shall pay interest thereon as from the date specified as aforesaid at such rate or rates as the Minister with the concurrence of the Minister responsible for finance may from time to time determine.

21. 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.

22. 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 and contingent), and income and expenditure of the Corporation, in a form which shall conform with the best commercial accounting standards applicable to electricity undertakings.

(2) 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 Corporation 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.

(3) 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.

(4) 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.

(5) 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.

PART VII

General (ss 23-29)

23. Annual report

(1) The Corporation shall, within a period of six months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on its operations during such year together with the auditors' report and the audited accounts as provided for in section 22, and the Corporation shall publish them 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.

24. Compulsory acquisition of land

For the purposes of any written law for the time being in force relating to the compulsory acquisition of land for public purposes, the functions and operations of the Corporation shall be deemed to be public purposes.

25. Re-settlement measures

If the operations of the Corporation make necessary the resettlement of any persons dwelling upon any communally owned land, the terms of such re-settlement shall be subject to the agreement of the Government and of the local authority of the area concerned.

26. Compensation for loss or damage

(1) In the exercise of its powers under this Act in relation to the execution of works or interference with property the Corporation shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons who have sustained loss or damage for all loss or damage sustained by them by reason or in consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application of such compensation shall be determined by arbitration in accordance with the provisions of the Arbitration Act.

(2) For the purpose of such arbitration the parties shall be deemed to be parties to a submission in which the reference is to two arbitrators.

27. 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, documents and agreements relating to the purchase or sale of electricity as he may reasonably require for these purposes.

28. Power to make bye-laws

The Corporation may make bye-laws for any purpose connected with its powers, functions and duties under this Act and may impose penalties for breach of any such bye-laws.

29. Protection from personal liability

No matter or thing done by any member of the Corporation or by any officer or employee of the Corporation shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of this Act, render such person, or any persons acting by his direction, personally liable to any action, claim or demand whatsoever.

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