

BOTSWANA ENERGY REGULATORY AUTHORITY ACT, 2016

No. 13



of 2016

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An Act to provide for the establishment of Botswana Energy Regulatory Authority, its mandate, the regulation of the energy sector, and for matters incidental thereto.

Date of Assent: 26.09.16

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – Preliminary

Short title and commencement

1. This Act may be cited as Botswana Energy Regulatory Authority Act, 2016, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires –
“authorisation procedure” means the procedure prescribed by the Authority for authorising the construction of electricity generating capacity and significant infrastructure;
“Authority” means the Botswana Energy Regulatory Authority established under section 3;
“Board” means the Board of the Authority established under section 8;
“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 23;
“consumer” means the end-user of a product or service under the regulated sector;
“customer” means a person who is provided with a service or buys a product from a licensee for purposes of selling or providing the service to a consumer at a tariff under the regulated sector;
“energy sector” means sectors dealing with electricity, petroleum products, coal, natural gas, bio-energy, solar energy, renewable energy resources and other energy resources;
“licensed activity” means an activity licensed under Part VI;
“licensee” means a person licensed under this Act;
“member” means a member of the Board;
“petroleum products” means wholesale or retail oil, petrol paraffin, liquefied petroleum gas, diesel and any products specified as such by the Authority;
“regulated entity” means a licensee, operator, supplier and any other entity involved in the provision of service or activity in the regulated sector;

“regulated sector” means the energy sector;

“regulated sector legislation” means any of the following —

- (a) the Electricity Supply Act; Cap. 73:01
- (b) the Mines and Minerals Act; Cap. 66:01
- (c) the Petroleum (Exploration and Production) Act; Cap. 67:01
- (d) the Botswana Power Corporation Act; Cap. 74:01
- (e) the Control of Goods, Prices and Other Charges Act; and Cap. 43:08
- (f) any other legislation that applies to, is used in or is relevant to the regulated sector;

“significant infrastructure” means infrastructure that is delivered by a project or works that the Authority considers to be of a size or complexity that would require a bidding process for consumers to receive a better tariff or service;

“tariff” means a price or charge imposed on goods or services; and

“tendering procedure” means the procedure determined by the Authority, for conducting a tender for the procurement of an electricity generating capacity or significant infrastructure.

PART II — Establishment and functions of Botswana Energy Regulatory Authority

3. (1) There is hereby established a body to be known as the Botswana Energy Regulatory Authority.

Establishment
of Authority

(2) The Authority shall be a body corporate with a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may, by law, perform.

4. The Authority shall be responsible for providing an efficient regulatory framework for the regulated sector in accordance with this Act, with the primary mandate of providing the economic regulation of the sector.

Objectives
of Authority

5. The Authority shall be responsible for —

Functions of
Authority

- (a) ensuring sustainable and secure supplies in the regulated sector;
- (b) setting and maintaining service standards;
- (c) ensuring that tariffs in the regulated sector are fixed on the basis of a tariff methodology that has been set up in a transparent manner taking into account Government policy on cross subsidies between classes of consumers;
- (d) ensuring that interests between consumer, customer and licensee are adequately balanced;
- (e) protecting and preserving the environment; and
- (f) ensuring that the regulation of the energy sector is done in accordance with the best international regulatory practice.

Specific
functions and
powers of
Authority

6. (1) The Authority shall perform functions conferred on it by any regulated sector legislation.

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

- (a) regulate tariffs, including allowed revenue, for regulated entities in the regulated sector;
- (b) regulate coal supply agreements between collieries, coal suppliers and price-regulated generators;
- (c) subject to the regulated sector legislation, to license activities in the regulated sector;
- (d) regulate network access for independent power producers, privately financed projects in the regulated sector;
- (e) provide advisory technical expertise on tender procedures to the Public Procurement and Public Asset Disposal Board established under the Public Procurement and Asset Disposal Act;
- (f) regulate network access and storage systems access in natural gas network, gas storage, oil pipelines, petroleum pipelines and storage of oil and petroleum products including third party access to energy, transport and storage infrastructure;
- (g) monitor and inspect licensees and enforce licence obligations;
- (h) implement policy in relation to the generation of electricity from renewable energy resources, as may be advised by the Minister; and
- (i) oversee project development in the regulated sector.

Cap. 42:08

Seal of
Authority

7. (1) The seal of the Authority shall be such device as may be determined by the Board and shall be kept by the Chief Executive Officer.

(2) The affixing of the seal shall be authenticated by the Chief Executive Officer or any other person authorised in that regard by a resolution of the Board.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate would not be required to be under seal, may be entered into or executed without seal on behalf of the Authority by the Chief Executive Officer or any other person authorised by the Board to do so.

Board of
Authority

8. (1) The powers and functions of the Authority shall be exercised and performed by the Board appointed by the Minister.

- (2) The Board shall consist of -
- (a) four full time members; and
 - (b) four part time members.

(3) The Minister shall appoint, from among part time members, the Chairperson and Deputy Chairperson of the Board.

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

(5) The Chief Executive Officer shall be an *ex-officio* member of the Board.

9. (1) The Board shall ensure, so far as is practicable, that services provided in the regulated sectors are safe, reliable, efficient and affordable.

- (2) Notwithstanding the generality of subsection (1), the Board shall —
- (a) be responsible for the general control of the performance and management of the undertakings and affairs of the Authority;
 - (b) protect and promote the interests of customers, consumers and other users of the services in the regulated sector, particularly in respect of —
 - (i) the tariffs charged for, the availability and quality of services and products, and
 - (ii) where appropriate, the variety of services and products offered throughout the country;
 - (c) where relevant and so far as is practicable, ensure that the regulated entities have and maintain the resources to provide services and are otherwise fit and proper persons to provide the service;
 - (d) monitor the performance of the regulated entities in relation to levels of investment, availability, quantity, quality and standards of service, pricing, costs of services, efficiency of production, distribution and supply of service and any other matter decided upon by the Authority;
 - (e) enhance public knowledge, awareness and understanding of the regulated sector;
 - (f) encourage the preservation and protection of the environment and conservation of natural resources in accordance with any written law;
 - (g) process applications for and issue licences, permits and authorisations for regulated sector as may be prescribed;
 - (h) impose administrative sanctions, issue and follow up enforcement procedures to ensure compliance with conditions of licences, permits and authorisations;
 - (i) promote efficiency and economic growth in the regulated sector;
 - (j) hear complaints and disputes from customers, consumers and regulated entities and resolve the disputes and complaints or facilitate dispute resolution;
 - (k) ensure that the needs of low income, rural or disadvantaged groups or persons are taken into account;
 - (l) advise the Minister on policy matters concerning regulated sector and regulated sector legislation;
 - (m) take regulatory decisions in an open, transparent, accountable, proportionate, and objective manner; and
 - (n) perform all additional functions and duties as may be conferred on it by any written law.

(3) The Minister may give the Board directions, of a general or specific nature, which directions shall not be inconsistent with this Act or with the contractual or other legal obligations of the Board, and the Board shall give effect to any such direction.

Tenure of office

10. All members —

- (a) shall be appointed by the Minister for a maximum period of five years on such terms and conditions as may be specified in their instrument of appointment, provided that the appointments shall not expire on the same date; and
- (b) may be considered for re-appointment for a further term, not exceeding five years.

Disqualification, removal and resignation of members

11. (1) A person shall not qualify for appointment as a member or continue to hold office if he or she —

- (a) is at the time of appointment, a member of the National Assembly, councilor or a member of *Ntlo ya Dikgosi*;
 - (b) has in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged or rehabilitated, or
 - (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;
 - (c) has, within a period of 10 years immediately preceding the date of his or her appointment, been convicted of a criminal offence —
 - (i) in Botswana, or
 - (ii) outside Botswana, which if committed in Botswana, would have been an offence, and sentenced to at least six months imprisonment without the option of a fine, and has not received a free pardon irrespective of whether the sentence has been suspended;
 - (d) has, within a period of 10 years immediately preceding the date of his or her appointment, been disqualified or suspended by a competent authority from practising a profession on the grounds of misconduct or negligence; or
 - (e) is a holder of licence or has an interest in a licence issued under this Act.
- (2) The Minister shall remove a member from office, if the member —
- (a) becomes subject to a disqualification under subsection (1);
 - (b) has failed to comply with the provisions of section 18 and 19;
 - (c) is convicted of an offence under this Act, or under any other Act and after a period of 30 days, from the date that a ruling against the member is made on all appeals made in respect of the conviction, he or she is sentenced to imprisonment for a term of six months or more without an option of fine;

- (d) is absent, without reasonable cause, from three consecutive meetings of which that member has had notice;
 - (e) is found to be physically and mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a medical certificate to that effect;
 - (f) becomes the holder of a licence or acquires any interest in a licence issued under this Act;
 - (g) commits a material breach of the codes of professional conduct and ethics; or
 - (h) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Authority.
- (3) For purposes of subsection 2 (h) “misconduct” includes any act, done by a member without reasonable excuse, which —
- (a) amounts to a failure to perform in a proper manner, any duty imposed on him or her as such;
 - (b) is prejudicial to the efficient carrying out of the functions of the Authority; or
 - (c) tends to bring the Authority into disrepute.
- (4) A member may resign from the Board by giving 30 days’ notice of his or her intention to resign from office, in writing, to the Minister.

12. The Minister may, in writing, suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Board.

Suspension of member

13. A member shall vacate his or her office or a member’s office shall become vacant —

Vacation of office

- (a) if he or she is removed from office by the Minister, under section 11;
- (b) upon the expiry of 30 days’ notice in writing to the Minister of his or her intention to resign from office; or
- (c) upon his or her death.

14. (1) Where the office of a member becomes vacant before the expiry of the member’s term of office due to the member’s death, resignation or removal from office, the Minister may within four months from the date the vacancy occurred, in accordance with section 8 appoint another person to be a member in place of the member who has vacated office.

Filling of vacancies

(2) Subsection (1) shall not apply where the remaining period in office for the member vacating office is less than six months.

(3) The person appointed under subsection (1) shall hold office for the remainder of the term of office of the member in whose place he or she was appointed and shall be eligible for re-appointment.

15. A member shall be paid in connection with his or her service on the Board, out of the funds of the Authority, such remuneration and allowances as the Minister may determine.

Remuneration and allowances

Restrictions
on members

16. A person shall not, during a period of 12 months after vacation from his or her office under section 13 —

- (a) enter into any contract of employment or directorship with any regulated entity or licensee;
- (b) contract for the supply of services regulated by this Act or under regulated sector legislation; or
- (c) acquire or hold any financial interest in any regulated entity or licensee.

PART III — Meetings and proceedings of the Board

Meetings of
Board

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

(2) The Board shall hold its first meeting on such date and at such place as the Minister may determine and thereafter the Board shall hold at least 12 meetings in each financial year, and such other meetings as are necessary for the efficient performance and exercise of its functions.

(3) The Chairperson shall call and preside over all meetings of the Board, and in his or her absence, the Deputy Chairperson or in the absence of both the Chairperson and Deputy Chairperson, another part time member shall preside as chairperson for purposes of that meeting.

(4) Three full time members and two part time members shall constitute a quorum of the Board.

(5) Where a member has declared an interest in a matter before the Board, the member in question shall not be counted for the purposes of forming a quorum in relation to the matter in question.

(6) The decision of the Board shall be by a majority vote and, in the event of equality of votes, the person chairing shall have a casting vote.

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

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

Disclosure of
interest

18. (1) Every member shall, immediately upon commencement of a meeting, at which any matter which is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, disclose such interest and shall not take part in any consideration or discussion of or vote on any question concerning the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and the Board makes a decision which benefits that member, the decision shall be void.

(4) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000 or to a term of imprisonment not exceeding six months, or to both.

19. (1) A member shall observe and preserve the confidentiality of all matters coming before the Board, and such confidentiality shall subsist even after the termination of the member's term of office or the person's mandate.

Confidentiality

(2) Any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) A member shall not use any confidential information obtained in the performance of the member's functions as a member to obtain, direct or indirectly, a financial or other benefit for that member or any other person.

(4) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000 or to a term of imprisonment not exceeding six months, or to both.

20. (1) The Board may, for the purpose of performing the functions of the Authority, establish such committees as it considers appropriate, and may delegate to any such committee, such functions as it considers necessary.

Committees
of Board

(2) The Board may appoint to the committees constituted under subsection (1), such number of persons, from among members, as it considers appropriate, to be members of such committees and such persons shall hold office for such period as the Board shall determine.

(3) Subject to any direction given by the Board, a committee may regulate its own procedure.

(4) The meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

(5) The chairperson of each committee, appointed by the Board from among its members, shall cause to be recorded and kept minutes of all the proceedings of the meetings of the committee and keep the Board informed of the committee's activities in writing.

(6) A member of a committee shall be paid such remuneration and other allowances, if any, from the funds of the Authority, as the Minister may determine.

(7) The provisions of sections 11, 13, 14, 18, and 19 shall, with the necessary modifications, apply to a member of a committee.

21. All documents made by, and all decisions of the Board may be signified under the hand of the Chief Executive Officer, any member of the Board or senior officer of the Authority generally or specifically authorised by the Board.

Signification
of documents

22. (1) Subject to section 11, the Board may co-opt any person to attend a meeting of the Board or otherwise assist the Board with its deliberations, and such person shall not have any voting or other rights on the Board.

Co-opted
members

(2) The provisions of sections 18 and 19 shall, with necessary modifications, apply to co-opted members.

PART IV – *Staff of Authority*

Chief Executive
Officer

23. (1) There shall be a Chief Executive Officer of the Authority, who shall be appointed by the Minister, in consultation with the Board, and on such terms and conditions as may be specified in the instrument of appointment.

(2) The Chief Executive Officer shall be responsible to the Board.

(3) The Chief Executive Officer shall not, while in the employment of the Authority, engage in paid employment outside the duties of his or her office in the Authority.

(4) The Chief Executive Officer shall hold office for a maximum period of five years on such terms and conditions as may be specified in the instrument of appointment, and may be considered for re-appointment for a further term not exceeding five years.

(5) The Chief Executive Officer shall, subject to the directions of the Board on matters of policy, be responsible for —

- (a) the supervision of the day-to-day affairs of the Authority;
- (b) ensuring that the Authority is carrying out the functions and duties placed upon it in terms of this Act;
- (c) running the Authority on sound commercial and financial principles in accordance with policies and decisions made by the Board;
- (d) controlling the resources and operations of all the services under the Authority;
- (e) implementing the decisions of the Board; and
- (f) carrying out any duty that may be conferred on him or her by the Minister or the Board.

(6) In the performance of his or her duties, the Chief Executive Officer shall keep the Board fully informed of the affairs of the Authority and shall consult the Board from time to time, as may be necessary.

(7) The Chief Executive Officer may delegate to the Secretary, any senior staff or any member of staff of the Authority, as he or she considers appropriate, the exercise of any powers which he or she is authorised to exercise under this Act.

(8) The Minister may, after consultation with the Board, terminate the appointment of the Chief Executive Officer —

- (a) if the Chief Executive Officer conducts himself or herself in a manner that is detrimental to the objective of, or the proper performance of the functions of the Authority; or
- (b) if the Chief Executive Officer has been found to be physically or mentally unable to perform his or her duties efficiently, and a medical doctor has issued a certificate to that effect.

(9) The Chief Executive Officer may resign from his or her office by giving 30 days' notice of his or her intention to resign from office, in writing, to the Minister.

24. (1) The Board shall, on the recommendation of the Chief Executive Officer, appoint a Secretary to the Board, on such terms and conditions as may be specified in the instrument of appointment.

Secretary to
Board

(2) The Secretary shall, in addition to any function that may be assigned to him or her by the Board or the Chief Executive Officer, be responsible for —

- (a) taking minutes of the meetings of the Board;
- (b) keeping records of all decisions of the Board; and
- (c) keeping records of legal transactions of the Authority.

(3) The Secretary shall, unless the Board otherwise directs, in writing, giving the circumstances leading to its decision, attend all meetings of the Board but shall not have a right to vote on any matter before the Board.

(4) In the performance of his or her duties, the Secretary shall be accountable to the Chief Executive Officer.

(5) In the absence of the Secretary, the Chief Executive Officer may appoint any senior member of staff of the Authority to perform the functions of the Secretary until the Secretary resumes office or the vacancy is filled, as the case may be.

25. (1) The Board shall, on the recommendation of the Chief Executive Officer, appoint the senior staff of the Authority.

Appointment
of staff

(2) The Chief Executive Officer may appoint such other staff as may be necessary for the proper discharge of the functions of the Authority.

(3) The terms and conditions of employment of staff of the Authority shall be determined by the Chief Executive Officer, in consultation with the Board.

PART V — *Financial provisions*

26. (1) The funds of the Authority shall consist of —

Funds of
Authority

- (a) monies appropriated by the National Assembly for the purposes of the Authority;
- (b) fees that the Authority may impose for services provided under this Act;
- (c) fees that the Authority may impose for licences issued under this Act;
- (d) contributions or endowments from any other source, as may be approved by the Minister;
- (e) monies borrowed with the approval of the Minister responsible for finance, to cover short term cash flow requirements of the Authority; and
- (f) other fees or monies the Authority may, by virtue of this Act, raise or impose.

(2) The Authority shall use the funds acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus funds in such a manner as the Minister may direct.

Strategic and
annual plans

27. (1) The Authority shall submit a five-year strategic plan to the Minister outlining, for the five year period —

- (a) the goals of the Authority;
- (b) the objectives of the Authority;
- (c) the budget of the Authority; and
- (d) any other matter which the Minister may direct to be submitted.

(2) The Authority shall, at least three months before the beginning of each financial year, submit an annual plan to the Minister, for the Minister's approval, outlining for the financial year —

- (a) the goals of the Authority;
- (b) the objectives of the Authority;
- (c) the budget of the Authority; and
- (d) any other matter which the Minister may direct to be submitted.

Provision of
information

28. The Authority shall provide to the Minister such information concerning the operations, plans and financial accounts of the Authority as the Minister may, from time to time, consider necessary.

Financial year

29. The financial year of the Authority shall be a period of 12 months starting on 1st April and ending on 31st March each year.

Accounts and
audit

30. (1) The Authority shall —

- (a) keep and maintain proper accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Authority;
- (b) cause to be prepared in respect of each financial year and not later than three months after the end of that financial year, a statement of such accounts; and
- (c) provide any other information in respect of the financial affairs of the Authority as the Minister responsible for finance may require.

(2) The accounts of the Authority in respect of each financial year shall, within four months of the end of each financial year, be audited by an auditor appointed by the Board.

(3) The auditor shall report in respect of the accounts of each financial year, in addition to any other matter on which the auditor considers it pertinent to comment on, whether or not -

- (a) the auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the Authority have been properly kept;
- (c) the Authority has complied with all financial provisions of this Act with which it is the duty of the Authority to comply with; and

(d) the statement of accounts prepared by the Authority 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 Authority.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion, be forwarded to the Authority by the auditor.

31. (1) The Authority 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 the operations of the Authority during such year, together with the auditor's report and audited accounts as provided for in section 30.

Annual report

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

32. (1) The Authority may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.

Pension and other funds

(2) The Authority may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

PART VI — *Licensing of regulated activities*

33. (1) The Authority shall establish and maintain a non-discriminatory and efficient regulatory framework to be followed by all regulated entities and licensees in the regulated sector.

Regulatory framework

(2) The regulatory framework shall include —

- (a) administrative fees payable by licensees;
- (b) matters relating to policy;
- (c) tariff setting;
- (d) internal and external communication processes;
- (e) strategic planning processes for regulated sector;
- (f) licensing of activities in the regulated sector;
- (g) standards for supplies and services in the regulated sector;
- (h) processes and methodologies for undertaking tariff reviews;
- (i) processes and methodologies for monitoring performance of the regulated sector;
- (j) technical codes for licensees and regulated entities;
- (k) consumer protection and dispute resolution; and
- (l) environmental protection.

Service providers to be licensed

34. (1) A person shall not provide a service under a regulated sector unless he or she is issued with a licence in the prescribed manner, by the Authority authorising him or her to provide such service.

(2) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P30 000 or, in the case of a corporation, to a fine not exceeding 10 per cent of its annual turnover, or to imprisonment for a term not exceeding five years, or to both.

Licensing of electricity sector activities

35. (1) A person shall not —

- (a) generate electricity, including the co-generation of electricity and heat;
- (b) be a single buyer in relation to the electricity industry;
- (c) be a transmission system operator;
- (d) be a distribution system operator;
- (e) own transmission works;
- (f) own distribution networks;
- (g) sell electricity to consumers and customers; or
- (h) export or import electricity,

except in terms of a licence issued by the Authority authorising him or her to do so.

(2) Notwithstanding the provisions of subsection (1), a person shall not require a licence —

- (a) in respect of any installation not exceeding 100 kilowatt capacity which is situated entirely on the owner's own property or property occupied by him or her and is used by the owner to operate plant used solely by him or her, and for lighting any house, office or other building, and where no public supply of electricity is available; or
- (b) to carry out such other activities specified by the Authority as exempt from the requirement of a licence:

Provided where aggregate kilowatt capacity exceeds 100 kilowatt capacity, the provisions of subsection (1) shall apply.

Licensing of natural gas sector activities

36. (1) A person shall not —

- (a) be a system operator in any natural gas systems;
- (b) transmit natural gas;
- (c) distribute natural gas;
- (d) store natural gas;
- (e) sell natural gas to customers and consumers; or
- (f) import or export natural gas,

except in terms of a licence issued by the Authority authorising him or her to do so.

(2) Notwithstanding the provisions of subsection (1), a person shall not require a licence to —

- (a) store natural gas below 5 000 cubic metres, provided that the natural gas is measured under a standard temperature pressure of 101325 N/m²; or

(b) carry out such other activities specified by the Authority as exempt from the requirement of a licence.

37. (1) A person shall not —

- (a) construct and operate a petroleum pipeline;
- (b) transport petroleum products over a pipeline;
- (c) store and operate storage facilities for petroleum products;
- (d) operate loading or discharge facilities;
- (e) operate a retail service station;
- (f) manufacture petroleum products; or
- (g) import and export petroleum products,

except in terms of a licence issued by the Authority authorising him or her to do so.

(2) Notwithstanding the provisions of subsection (1), a person shall not require a licence to carry out activities specified by the Authority as exempt from the requirement of a licence.

(3) Where a storage facility for any petroleum product —

- (a) exceeds 30 000 litres intended for own use; and
- (b) is intended for commercial purposes,

the provisions of subsection (1) shall apply.

38. Where the Authority considers it necessary, it may issue a licence to an applicant, on an exclusive basis, to carry out one or more of the regulated activities specified in the licence, throughout the whole of Botswana.

39. (1) Subject to the requirements under the regulated sector legislation, the Authority may, on application made in the prescribed form, accompanied by a prescribed application fee and such documents as the Authority may direct, issue a person with a licence for activities under this Part.

(2) An application for a licence shall include —

- (a) the name and address of the applicant;
- (b) a description of the regulated sector specific activity that the applicant proposes to carry out;
- (c) the geographic area where the applicant proposes to carry out the activity and the details of all facilities where the activity is to be carried out; and
- (d) evidence that the applicant has the —
 - (i) financial and technical capability and the necessary experience to carry out the activity for which a licence is sought, and
 - (ii) requisite ownership or usage rights over the principal facilities to be used to perform the activity.

(3) The Authority shall not issue a licence to an applicant whose licence for the same activity was withdrawn or revoked in accordance with this Act, in the preceding five years.

40. (1) The Authority shall, within 14 days of the date of receipt of an application, acknowledge in writing, receipt of the application.

Licensing of
petroleum
sector
activities

Exclusive
licence

Issue of
licence

Assessment of
application for
licence

(2) In assessing an application under this Act, the Authority shall be guided by the following principles —

- (a) whether the issue or renewal of a licence will bring any benefits to the national economy and to consumers in the energy sector; and
- (b) whether the applicant can provide the service in respect of which the licence or renewal application is made, in a safe and sustainable manner.

(3) If, after receipt of the application, the Authority is of the opinion that it requires further information to assess the application, the Authority may, within 28 days from the date of receipt of the application and by written notice, request for further information from the applicant or third parties, as may be identified by the Authority, and the notice shall —

- (a) specify the information required from the applicant;
- (b) where applicable, notify third parties of the application and invite comments from them;
- (c) specify the time within which the information or comments shall be submitted to the Authority; and
- (d) specify the date by which the Authority intends to make a final decision on the application.

(4) The Authority shall, where it considers necessary, by notice in the *Gazette* and two newspapers in circulation, publish the licence it proposes to issue and invite interested parties to comment on the licence within the time specified in the notice.

(5) The Authority shall notify the applicant, in writing, of its decision within 14 days from the date the decision is made and where the Authority decides not to issue the licence, state the reasons in such notice.

Authorisation
to construct
infrastructure

41. (1) A person shall not construct a significant infrastructure unless he or she is authorised to do so by the Authority.

(2) An application for authorisation shall be made to the Authority in writing and shall —

- (a) describe by reference to a map and geographical coordinates, the land on which the generating station or significant infrastructure is proposed to be constructed, extended or operated and the land across which any associated transmission line or pipeline is proposed to be installed;
- (b) state whether the applicant owns the land on which the generating station or significant infrastructure is proposed to be constructed or has the requisite rights to the land; and
- (c) be accompanied by fees prescribed by the Minister and such additional information as the Authority may direct.

(3) The Authority shall notify persons likely to be affected by the authorisation of the application, by publishing a notice in a manner it considers appropriate and invite such persons to comment on the application within the time specified in the notice.

(4) When assessing the application, the Authority may consult any person and shall consider any objections raised during consultation and comments received from affected persons.

5) The Authority may, where it considers appropriate, grant the authorisation applied for by the applicant subject to the conditions stated in the authorisation and such authorisation shall not relieve the applicant from obtaining other licences and permits issued by the Authority.

(6) Where the Authority decides not to grant the authorisation, the Authority shall notify the applicant of its decision and reasons for the decision.

42. (1) An application for a licence under this Act may, if the Authority considers it appropriate, be invited through a tendering procedure determined by the Authority.

Application
through
tendering
process

(2) The Authority may invite or direct a licensee to invite tender proposals for designing, constructing, owning and operating an electricity generating capacity or significant infrastructure, where it appears to the Authority that —

- (a) the electricity generation proposed or under construction pursuant to an authorisation granted under section 40 or being procured by the Government will not be sufficient to meet the projected demand for electricity; or
- (b) there is a need for significant infrastructure to meet the projected demand or enhance supply or the quality of a product and such infrastructure is not procured by the Government.

(3) The Authority shall take all necessary measures to ensure that there is adequate finance to provide for and use of the generating capacity or the significant infrastructure.

(4) Where the Government procures a new electricity generating capacity or significant infrastructure -

- (a) the Minister or a person designated by the Minister shall —
 - (i) consult with the Authority and take into account any representation made by the Authority on the terms of the tender and specifications for the capacity or infrastructure to be procured, and
 - (ii) on receipt of completed tender offers from bidders, send copies of the tender offers to the Authority; and
- (b) the Authority shall evaluate and decide on the tender.

43. A licence issued under this Act shall be valid for a period stipulated in that licence.

Validity of
licence
Conditions of
licence

44. A licence granted under this Act may be granted subject to such conditions and restrictions as the Authority considers necessary, including —

- (a) the duration of the licence;
- (b) the activities which the licensee is authorised to carry out;
- (c) the scope of activities for which the licence is issued;

- (d) where a licensee is licensed for more than one activity, a segregation of the regulated activities from other activities of the licensee for accounting and regulatory purposes;
- (e) compliance by licensee with the applicable laws, codes, standards and decisions of the Authority;
- (f) submission, by licensee and persons connected to the licensee's network, of technical codes for approval to the Authority;
- (g) the terms and conditions on which the Authority may amend, suspend or revoke a licence; and
- (h) the payment of licence fees, by a licensee, to the Authority.

Licensed for more than one activity

45. (1) Where a licensee is licensed to carry out more than one licensed activity, the licensee shall maintain separate accounts for each activity as may be specified by the Authority.

(2) The Authority may, after consultation with the Minister and other persons as it may consider appropriate, prescribe additional requirements for separating the licensed activities, including —

- (a) a requirement that the other licensed activity be carried out by a separate entity;
- (b) a requirement on the licensee to corporatise separate business units;
- (c) a requirement on the licensee to establish contractual arrangements to support the separation process;
- (d) the preparation of transfer schemes of assets and liabilities;
- (e) the establishment of assets and employee registers; and
- (f) proposals for amending the licences to facilitate the separation of activities.

Suspension and Revocation of licence

46. (1) The Authority may suspend, impose further conditions on or revoke a licence —

- (a) where a licensee —
 - (i) contravenes the provisions of this Act or any regulated sector legislation, or fails to comply with any lawful direction or requirement of the Authority,
 - (ii) defaults on or breaches any material condition of the licence,
 - (iii) is declared bankrupt, insolvent or enters into liquidation, or
 - (iv) is found to have presented false information which formed the basis of the licence being granted; or
- (b) as may be necessary in the public interest.

(2) When determining which action to take under subsection (1), the Authority shall take into account —

- (a) the impact of the contravention on customers and consumers;
- (b) the extent to which the licensee has achieved any financial or any other gain from the contravening act;

- (c) whether the licensee has committed a similar contravention in the past;
- (d) the duration and seriousness of the contravention; and
- (e) any mitigating or aggravating factors.

(3) A revocation, suspension or imposition of further conditions upon a licence shall not be made until the licensee has, by notice in writing, been given the opportunity by the Authority, to rectify that contravention or failure, or show cause within such time as may be specified, why the licence should not be revoked, suspended or have further conditions imposed thereon.

(4) The Authority shall cause to be published, a notice in the *Government Gazette* and two newspapers in circulation, of the revocation, suspension or imposition of further conditions.

(5) The Authority shall publish and make available guidelines and relevant considerations relating to the exercise of its powers under this section.

47. (1) A licence issued under this Act shall not be transferred, assigned or encumbered in any way without the prior approval of the Authority.

Transfer of
licence

(2) An application for the transfer, assignment or encumbrance of a licence shall be made to the Authority in such form and upon payment of such fee as may be prescribed by the Minister.

(3) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P30 000, or in the case of corporation, a fine not exceeding 10 percent of its annual turnover, or to imprisonment for a term not exceeding five years, or to both.

48. (1) Where a licensee is declared bankrupt, insolvent or is liquidated or where the Authority has reason to believe that the licensee will imminently be declared bankrupt, insolvent or illiquid, the Authority shall consult with the Minister, and subject to the Minister's approval —

Bankruptcy,
insolvency, etc.
of licensee

- (a) terminate the licence; and
- (b) to the extent possible, ensure continued performance of the licensed activity by transferring the obligations of the licensee to another licensee who is required to perform the obligation as last resort by a condition in his or her licence or willing to assume the obligations.

(2) A person filing a petition to the court to declare a licensee bankrupt or insolvent or to liquidate or wind-up the licensee's business shall serve the Authority with the notice of the petition.

(3) The Authority shall, within 14 days, from the date of receipt of the notice, file a notice to the court indicating the Authority's intention to exercise the powers under subsection (1).

(4) If the Authority does not file the notice to the court as required under subsection (3), the court shall be entitled to proceed with the matter following the court's ordinary procedure.

(5) Where a person intends to enforce a security or bond over the property of a licensee that is essential for the performance of the licensed activity, the person shall give notice, to the Authority, of his or her intention to do so.

(6) If the person does not receive notice of the Authority's intention to exercise the powers under subsection (1), the person shall be entitled to enforce such security or bond following the ordinary procedure.

Change of
ownership by
licensee

49. (1) A licensee that is a body corporate shall immediately notify the Authority, in writing, of any change in its ownership.

(2) Where, in the opinion of the Authority, the change negatively affects the performance of the licensed activity or hinder the exercise of the Authority's functions under this Act, the Authority may revoke or amend the licence.

Continuation
of service in
public interest

50. (1) Where the Authority revokes a licence in accordance with section 46, and determines that it is in the public interest that the licensed activity continues to be carried out, the licensee shall hand over to the Authority or any person appointed by the Authority, all works, buildings, machinery and every other thing associated with the operation of the licence, including up to date books of account and all financial and commercial liabilities and assets.

(2) Where the Authority has made a determination in terms of subsection (1) —

(a) in dealing with real property, compensation shall be payable in terms of the law relating to the acquisition of property for public purposes; and

(b) in dealing with other property, compensation shall be assessed solely upon an assessment of the actual value of the assets employed in the operation of the licence carried out by the person nominated by the Authority.

(3) Where, in terms of a licence issued under this Act, an agreement exists between the Government and a licensee concerning compensation matters in relation to any determination in terms of subsection (1), the terms of the agreement shall apply in calculating compensation.

Fees

51. (1) The Minister shall, on the advice of the Authority, prescribe fees payable to the Authority, including application fees, annual licence fees, and fees for other services provided by the Authority.

(2) In determining the fees payable under this Act, the Authority shall ensure that —

(a) the fees are reasonable, justifiable and appropriate for the type of activity licensed;

(b) the fees allow financial sustainability and cost effective operation of the Authority, taking into account any relevant benchmarks with other regulatory authorities operating under similar and comparable circumstances;

(c) the fees include a decommissioning fee, as may be required for environmental restoration; and

(d) the annual licence fees, in aggregate, do not exceed one and a half percent of the combined gross turnover of the licensee or regulated entity.

(3) The Authority shall cause to be published, a notice in the *Gazette*, at such times as the Authority may consider appropriate, the procedure and the date by which payment of annual licence fees shall be made.

PART VII — *Supervision and investigation by Authority*

52. (1) The Authority shall supervise and monitor a licensee to ensure —

Supervision
by Authority

(a) compliance with this Act and the terms and conditions of a licence;

(b) implementation of tariffs including allowable revenues; and

(c) implementation of the regulatory decisions and instructions issued by the Authority to the licensee.

(2) When exercising its supervisory function, the Authority may, in accordance with this Act —

(a) carry out an investigation on the licensee;

(b) carry out site inspections and audit the licensee's operations;

(c) request for any information from the licensee, as the Authority considers necessary; and

(d) impose compulsory administrative measures and fines including penalties for failure to comply with this Act or licence conditions.

53. (1) The Authority may, either on its own initiative or upon receipt of information or complaint from any person, investigate a licensee where the Authority has reasonable grounds to suspect that a licensee is contravening or has contravened the provisions of this Act or the conditions of a licence.

Investigation
by Authority

(2) Where the Authority decides to conduct an investigation under subsection (1), the Authority shall as soon as practicable, give written notice to the licensee and affected persons, where necessary, of the investigation and the notice shall —

(a) indicate the subject matter and the purpose of investigation;

(b) request the licensee and the affected persons to submit to the Authority any information which may be relevant to the investigation within the time specified in the notice; and

(c) invite the licensee and the affected persons to submit to the Authority, any representation which the licensee or affected persons may wish to make to the Authority in connection with the investigation within the time specified in the notice.

(3) Where the Authority considers that to give notice under subsection (2) would materially prejudice the exercise of its powers, it may defer the giving of notice until after the powers have been exercised.

54. (1) The Authority may authorise an officer to enter and search the premises of a licensee in connection with an investigation under section 53.

(2) The authorised officer shall before searching the premises, give a licensee or the person in control of the premises four days' written notice of the intended search and grounds for searching the premises.

(3) Where the Authority considers that to give notice under subsection (2) would materially prejudice the investigation or the authorised officer has taken all the reasonable steps to give notice to the licensee or person in control of the premises but is unable to do so, the search may be undertaken without giving notice.

(4) An authorised officer may not enter and search any premises unless he or she obtains a warrant, in accordance with subsection (5), authorising such entry and search.

(5) Where a magistrate is satisfied, upon application made on oath or affirmation by the authorised officer, that there are reasonable grounds for the authorised officer to exercise the powers conferred on him or her by this section, the magistrate may grant a warrant authorising the authorised officer to exercise those powers in relation to any premises specified in the warrant.

(6) An authorised officer shall, when entering the premises, provide proof of authority to search the premises by handing a copy of the warrant and an identification card issued by the Authority to the licensee or the person in control of the premises.

(7) An authorised officer may, at any time during normal business hours —

- (a) enter the premises where information or documents are kept by the licensee;
- (b) search the premises or any person on the premises if there are reasonable grounds for believing that the person has possession of any document or article that has a bearing on the investigation;
- (c) examine any document or article found in the premises that has a bearing on the investigation;
- (d) require information to be given on any document by the owner of the premises, person in control of the premises, any person who has control of the document or information or any other person who may have the information;
- (e) take extracts from or make copies of any document found on the premises that has a bearing on the investigation; and
- (f) take possession of such documents or information, where it appears necessary to prevent interference with the information or not reasonably practicable to make copies.

(8) An authorised officer shall not interfere with the premises more than is reasonably necessary to exercise his or her powers under this section.

(9) An authorised officer may be accompanied and assisted by other persons specified in the warrant or authorised by the Authority.

(10) Notwithstanding subsection (4), an authorised officer may without a warrant enter any premises, other than a private dwelling, to exercise the powers under subsection (1) if the licensee or the person in control of the premises consents to the entry and search of the premises.

55. Where the Authority determines, after an investigation under section 53, that a licensee has contravened a provision of this Act or a condition of a licence, the Authority may —

Enforcement

- (a) subject to section 46, amend, suspend or revoke the licence;
- (b) issue a direction to the affected persons requiring them to take such steps as may be necessary, in relation to their provision of service to the contravening licensee; or
- (c) impose such fine as it may consider appropriate.

PART VIII — *Tariff regulation and review*

56. A tariff which lawfully applied to a licensee or regulated entity before this Act came into operation, shall continue to apply until a new tariff is or revenue requirements are determined by the Authority in accordance with this Part.

Continuation
of tariffs

57. (1) The Authority may review a tariff —

Review of
tariffs

- (a) where the Authority considers it necessary to do so in the interest of customers, consumers and other users;
- (b) where the tariff is due for periodic review as shall be determined by the Authority from time to time; or
- (c) where the Authority determines, either on its own initiative or following a written application by a licensee, that there has been a material change in the circumstances making it necessary that a tariff be reviewed.

(2) Notwithstanding subsection (1), the Minister may, in the interest of the public, direct the Authority to review a tariff.

(3) Where an application is made under subsection (1), and the Authority considers that competition in the market makes the review or approval of the licensee's proposed tariff not to be in the interest of customers, consumers or other users, the Authority shall not review the tariff.

(4) To initiate a tariff review, the Authority shall, in writing, give a review notice to the licensee and persons affected or likely to be affected by the tariff review, as the Authority may consider appropriate, notifying the licensee and such persons of the intended review.

(5) The review notice shall require the licensee and persons affected or likely to be affected by the review to provide the Authority with such information and within such time as the Authority may specify in the review notice.

(6) The Authority shall after considering the information received under subsection (5), consult with the Minister on changes to the tariff that the Authority proposes for the Minister's approval.

(7) When exercising its functions under this section, the Authority may, where it considers it necessary, conduct a public inquiry.

Tariff
methodology

58. (1) The Authority shall, from time to time and by notice in the *Gazette*, publish the tariff review process stating the methodology and considerations that the Authority apply when reviewing a tariff.

(2) The Authority may, where it considers it necessary and by notice in the *Gazette*, consult licensees and interested parties when reviewing a tariff methodology.

(3) A tariff methodology shall include —

- (a) the principles on which the methodology is based;
- (b) the form of tariff regulation and method for calculating the tariff;
- (c) the frequency of periodic review of the tariff; and
- (d) any other matter that the Authority considers relevant for calculation of the tariff or for collecting information for the tariff.

Subsidies

59. The Authority shall, when reviewing tariffs, take into account any direct subsidies paid by the Government to support energy or cross subsidies between different consumer classes, as shall be determined by the Minister.

Recoverable
cost by single
buyer

60. (1) Where a single buyer enters into or amends a fuel supply agreement for a generation facility or infrastructure, through bilateral negotiations or as part of a tendering process, the single buyer shall submit the terms of the agreement to the Authority, prior to entering the agreement.

(2) The Authority shall, upon receipt of the terms of the agreement under subsection (1), determine the proportion of the price paid by the single buyer for the fuel that is allowed as a recoverable cost by the single buyer in the single buyer's tariff.

Notice of
approved
tariffs

61. Where the Minister approves a new or revised tariff, the Authority shall notify the licensee, customers, consumers and all affected persons of its approval and inform them of —

- (a) the steps to be taken to implement the new or revised tariff; and
- (b) the date on which the new or revised tariff shall take effect taking into account the billing process of the licensee.

PART IX — *Miscellaneous provisions*

Competition
rules
Cap. 46:09

62. (1) The Board shall refer all issues relating to competition which may arise in the course of the discharge of its functions to the Competition Authority established under the Competition Act.

(2) Notwithstanding subsection (1), the Authority shall, as far as is practicable and within the framework of the licensing system established by this Act, ensure that services are provided in a competitive and non-discriminatory basis.

63. (1) A licensee shall prepare and submit, to the Authority for approval, a code of practice on consumer protection, as may be prescribed, which shall include procedures that the licensee will employ in response to any inquiries or complaints by consumers or customers.

Consumer
complaints

(2) A consumer, customer or licensee may refer a complaint or dispute to the Authority for resolution if it relates to —

- (a) access to or quality of the service offered or provided by a licensee;
- (b) financial obligations that a licensee imposes or intends to impose on the customer or consumer for the provision of service;
- (c) a refusal to make an offer of a connection, use of network agreement or disconnection of service by a licensee;
- (d) interpretation of a contract between a licensee, customer and consumer relating to a licensed activity;
- (e) the treatment of the consumer's confidential information by a licensee; or
- (f) any other matter that is within the jurisdiction of the Authority.

(3) A licensee shall not disconnect or change any service being provided to a customer or consumer during the time that the service is the subject of the dispute without an interim or final determination from the Authority.

64. The Authority shall consider any complaint which —

Investigation
of complaints

- (a) relates to services provided under this Act;
- (b) relates to equipment supplied in relation to this Act; or
- (c) is the subject of a representation made to the Authority by or on behalf of the complainant.

65. (1) In the performance of any work, a licensee or regulated entity shall cause as little damage and inconvenience as possible on any property.

Compensation

(2) Where there is any damage or loss of property through the performance of any work, the licensee or regulated entity shall make full compensation to the owner of the property that is damaged or lost as a consequence of the performance of the work.

66. (1) The Authority may require, from any person, any information as the Authority considers necessary to enable it to carry out its functions under this Act.

Power to
obtain
information

(2) The information referred to under subsection (1), shall include any information which —

- (a) is in the actual possession, custody or control of any person;
- or

- (b) can reasonably be obtained from that person.
- (3) A request for any information under subsection (1) shall be made in writing by an officer of the Authority and be addressed to, and served —
- (a) in the case of an individual, at his or her last known home address; or
 - (b) in the case of a corporation, to the address of the corporation's registered office or principal business premises.
- (4) The request for information shall —
- (a) specify the nature and type of information sought by the Authority in sufficient detail as shall enable the person to identify and provide the information;
 - (b) specify in detail the reason why the Authority is making the request for information;
 - (c) specify the nature of any possible offences in respect of which the information is required; and
 - (d) specify the format and time within which the information is to be provided.
- (5) Upon receipt of a request for information, a person to whom the request is made, shall, at the Authority's option as set out in the request and within the period specified in the request, either give access to the Authority to inspect the information or provide a copy of such information.
- (6) If the Authority is given access to the information, the Authority shall be entitled to make copies of, or take extracts from such information.
- (7) A person shall not give or authorise the making or issuance of a statement or information, pursuant to this section, which he or she knows to be false or misleading.
- (8) Notwithstanding the provisions of subsections (5) and (6), the Authority shall not disclose to any other person, any information so acquired, if the disclosure would be detrimental to the person or the business of the person or entity providing the information, except where the Authority is required to do so by any written law.
- (9) Where the Authority is required, by law, to make the information obtained available to the public or disclose to a third party, such disclosure shall be made subject to confidentiality restrictions.
- (10) A licensee under this Act shall, when required by an officer of the Authority, authorised to inspect licences, produce his or her licence for inspection.
- (11) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P30 000, or in the case of a corporation, a fine not exceeding 10 per cent of its annual turnover, or to imprisonment for a term not exceeding five years, or to both.

Power to hold
inquiries

67. (1) The Authority may conduct a public inquiry where it considers it necessary or desirable for purposes of carrying out its functions.

(2) Notwithstanding subsection (1), the Authority shall conduct a public inquiry before exercising its power to —

- (a) grant, renew or cancel a licence; and
- (b) adopt a code of conduct or technical code.

(3) The Authority shall give notice of a public inquiry by —

- (a) publishing a notice in the *Gazette* and two newspapers in circulation specifying —
 - (i) the purpose of the inquiry,
 - (ii) the time within which submissions should be made to the Authority,
 - (iii) the form in which submissions should be made, and
 - (iv) in the case where the inquiry is conducted at the Minister's direction, the Minister's terms of reference;or
- (b) sending a written notice, including the information in paragraph (a), to —
 - (i) any regulated entity or licensee whose interests the Authority considers likely to be affected by the outcome of the inquiry, and
 - (ii) any person who may have an interest in the matter.

68. (1) The Authority may use information provided to it in the exercise of its functions.

Use of
information

(2) A member or an employee of the Authority shall not disclose any information which is marked as confidential if such disclosure would, in the opinion of the Authority, be detrimental to the person or the business of the person providing the information except where —

- (a) the information is required in connection with bankruptcy or winding-up proceedings involving the person;
- (b) the information is required in connection with civil or criminal proceedings involving the person;
- (c) the member or employee of the Authority is summoned to appear before a court of competent jurisdiction and the court orders disclosure of the information;
- (d) the information is required by an auditor, legal representative of the Authority or a person who is entitled to the information in the course of his or her professional duties;
- (e) the information is required in connection with an investigation carried out under the Corruption and Economic Crime Act;
- (f) the disclosure is made in proceedings under this Act or is made as part of the reasons for the Authority's decision;
- (g) the disclosure is made with the consent of that person; or
- (h) the information is or becomes available to the public.

Cap. 08:05

(3) Where the Authority is required to make any information available to the public, such requirement shall be subject to the restrictions under subsection (2) and shall be considered to have been fulfilled if the Authority makes the information available for public inspection at its offices or in any form of publication.

(4) Any person who contravenes the provisions of this section commits an offence and is liable to a fine of not less than P50 000, or to imprisonment for a term not exceeding five years, or to both.

Indemnity

69. No matter or thing done or omitted to be done by a member, member of staff of the Authority or any person authorised by the Authority shall, if the matter or thing is done *bona fide* in the course of the operations of the Authority, render that authorised person or member of staff, personally liable to an action, claim or demand.

Public register

70. (1) The Authority shall keep and maintain a national energy and water register at its principal office which shall be accessible to members of the public for inspection at all times during business hours.

(2) The register shall contain —

- (a) the key elements of all licences issued by the Authority;
- (b) decisions of the Board, as may be considered necessary by the Board;
- (c) all codes and standards approved by the Board;
- (d) standard connection offers and agreements approved by the Authority;
- (e) licence fees; and
- (f) any other information, as the Authority considers appropriate.

Appeals

71. (1) A person who is aggrieved by a decision of the Authority given under this Act may, within 30 days from the date of the notification or communication of the decision to him or her, appeal against that decision to the High Court.

(2) Where a licensee, aggrieved by a decision of the Authority made in accordance with section 46, applies for review or appeals to the High Court, the High Court shall, where it determines that the Authority acted improperly, irregularly, unprocedurally or unlawfully in arriving at the decision —

- (a) determine the amount of compensation to be paid to the licensee, if there is no agreement between Government and the licensee; or
- (b) refer the calculation of compensation to be paid to the licensee to arbitration, if there is an agreement between Government and a licensee providing for arbitration.

(3) Notwithstanding subsection (2), where there is an agreement between Government and a licensee providing for dispute resolution and compensation arrangements, a licensee may refer the Authority's decision to such dispute resolution or compensation arrangements.

Continuity of service

72. (1) The Authority shall make the necessary arrangements to ensure the continuity of service of any licensed activity to consumers where a licensee fails to carry out the licensed activity.

(2) The arrangements made under subsection (1), may be in the form of —

- (a) an instruction by the Authority instructing the licensee to take the necessary steps to remedy the situation;

- (b) an interim arrangement to ensure the continuance of the licensed activity including appointment of an administrator, additional director or liquidator where the Authority considers it appropriate; or
- (c) termination of the licence or transfer of the obligations of the licensee under this Act.

73. Any person who contravenes the provisions of this Act, commits an offence is liable to a fine not exceeding P30 000, or in the case of a corporation, a fine not exceeding 10 percent of its annual turnover, or to imprisonment for a term exceeding five years, or to both.

Offences

74. (1) The Minister may, after consultation with the Authority, make regulations for the better carrying out of the provisions of this Act.

Regulations

(2) The regulations made under subsection (1) may include —

- (a) codes and rules of conduct;
- (b) standards applicable to the regulated activities and services;
- (c) complaints procedures; and
- (d) any matter required to be prescribed under this Act.

75. (1) Where the powers and functions of the Minister or any person, under the regulated sector legislation or any other written law, have been transferred to the Authority in pursuance of this Act, the transfer of such powers shall come into effect on the date appointed by the Minister, by Order published in the *Gazette*.

Savings and transitional provisions

(2) Any decisions and any other actions lawfully taken by the Minister or a regulated entity, prior to commencement of this Act, in so far as they relate to the powers and functions transferred to the Authority and are not inconsistent with the provisions of this Act, are deemed to be decisions made and actions taken under this Act.

(3) The Minister may, by Order published in the *Gazette*, make such transitional arrangements as shall be necessary.

PASSED by the National Assembly this 8th day of August, 2016.

BARBARA N. DITHAPO,
Clerk of the National Assembly.