

SOCIETIES ACT, 2022

No. 6



of 2022

ARRANGEMENT OF SECTIONS

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**An Act to regulate the registration, monitoring and supervision
of societies and matters incidental thereto and connected with.**

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

Short title	1. This Act may be cited as the Societies Act, 2022.
Interpretation	2. In this Act, unless the context otherwise requires —
Cap. 24:01	“authorised officer” means an officer of the Registrar authorised by the Registrar to perform duties under this Act;
	“ammunition” has the same meaning assigned to it under the Arms and Ammunition Act;
	“arms” has the same meaning assigned to it under the Arms and Ammunition Act;
	“Council” means the Advisory and Arbitration Council established under section 21;
Cap. 08:07	“financial offence” has the same meaning assigned to it under the Financial Intelligence Act;
	“illegal society” means a society in terms of section 5 (7) that operates without a certificate of registration of approval issued by the Registrar of societies;
	“illicit dealing in arms or ammunition” means a contravention of any of the provisions of Parts IV to VI of the Arms and Ammunition Act;
Cap. 08:03	“money laundering” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;
	“office-bearer” of a society means any elected, appointed or co-opted person who is a member of the board, committee or governing body thereof;
Cap. 08:08	“proliferation” has the same meaning assigned to it under the Counter Terrorism Act;
	“register” means a register of societies that is kept and maintained by the Registrar under section 8;
	“Registrar” means the Registrar of Societies appointed under section 3; and
	“society” means any association of 150 or more persons for a religious society and 20 or more persons for any other society, formed primarily for raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes.
Appointment of Registrar	3. (1) The Minister shall by Notice published in the <i>Gazette</i> appoint a public officer to be the Registrar. (2) The Registrar shall, subject to any directions given by the Minister, be charged with the general administration of this Act and shall not be liable to a suit or to prosecution in respect of anything done in good faith in execution of his or her duties.

- 4.** (1) A society shall be considered to be established in Botswana if —
- (a) it has its headquarters or principal place of business in Botswana; and
 - (b) at least two thirds of its office-bearers reside in Botswana.
- (2) When establishing a society, in accordance with the provisions of subsection (1), the Registrar shall verify the identity of a person who controls or directs the activities of the society including a senior office bearer and board member.
- 5.** (1) A society shall within 28 days of formation, make an application in such form as may be prescribed to the Registrar for registration.
- (2) An application for registration of a society shall be accompanied by —
- (a) such particulars as the Registrar may consider necessary;
 - (b) a prescribed application fee; and
 - (c) an inspection report on the premises of the society by an authorised officer.
- (3) The Registrar shall, upon receipt of an application for registration of a society approve and register a society.
- (4) The Registrar shall, after the registration of a society, issue a certificate of registration to a society in such form as may be prescribed, which certificate of registration shall be evidence of registration of the society.
- (5) A certificate of registration issued under subsection (4), shall be valid for a period stipulated on the certificate.
- (6) A society shall not operate, unless the society has been issued with a certificate of registration by the Registrar.
- (7) A society shall be considered an illegal society if it operates without a certificate of registration.
- 6.** (1) The Registrar may refuse to register a society where he or she is satisfied that —
- (a) the objects of the society are unlawful and prejudicial to the peace, welfare or good order;
 - (b) the society, within 90 days immediately after being required under section 5 (2) to provide information, fails to provide the information so required;
 - (c) the office-bearers of the society are unable to keep proper records of meetings of the society and of its members and the control and management of the financial affairs of the society and of its property, and to perform the duties imposed on them by this Act;
 - (d) the application of registration of a society does not comply with this Act;
 - (e) has not adopted its own constitution;
 - (f) the constitution of the society is repugnant to or inconsistent with any written law; and
 - (g) the Registrar is satisfied that the society does not exist;

Establishment
of society

Application for
registration

Refusal of
registration

- (h) the name under which the society is to be registered —
 - (i) is identical to that of any other existing society,
 - (ii) so nearly resembles the name of such other society as, in the opinion of the Registrar, to be likely to deceive the public or the members of either society, and
 - (iii) is, in the opinion of the Registrar, repugnant to or inconsistent with any written law,
- (i) there is reasonable suspicion that the society has committed a financial offence;
- (j) the society or its office bearer is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (k) the society or its office bearer is affiliated with a society that is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (l) the society provides funding or support for terrorist activities or finances proliferation or illicit dealing in arms or ammunition;
- (m) an office-bearer of the society has been found guilty of a crime, in the area the society wishes to operate in, either in or outside Botswana; and
- (n) an officer-bearer holds another office in a society operating in the same space.

(2) Where the Registrar rejects an application for registration, the society may within 28 days after the date of such rejection, appeal to the Minister.

(3) Any person or society aggrieved by a decision of the Minister may appeal to the High Court within 30 days of receiving notice of such decision.

Disqualification
for office-
bearers

7. A person shall not qualify for appointment as an office bearer if he or she has —

- (a) in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made an assignment to, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
- (b) within the period of 10 years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence within Botswana, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence is suspended or not, and for which he or she has not received a free pardon.

Register

8. (1) The Registrar shall keep and maintain a register of societies registered under this Act.

(2) Any person may inspect the register or any documents relating to any entry in the register, and may obtain from the Registrar a copy of or an extract from the register or any such document, on payment of the prescribed fee.

9. (1) The Registrar may cancel registration of a society where the society —

Cancellation
of registration

- (a) has changed its objects without the consent of the Registrar;
- (b) has failed to comply with the provisions of section 13;
- (c) or its office bearer is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (d) or its office bearer is affiliated with a society that is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (e) provides funding or support for terrorist activities or finances proliferation or illicit dealing in arms or ammunition; or
- (f) contravenes any other written law.

(2) The Registrar shall —

- (a) notify the society in writing of his or her intention to cancel the registration of a society; and
- (b) give a society 21 days from date of notification within which the society may give reasons why the Registrar shall not cancel the society's registration;

(3) The Registrar may, after the expiry of the 21 days referred to under subsection (2), and after considering reasons submitted by the society, notify the society in writing of his or her decision to cancel the registration of the society within 28 days.

(4) A society shall surrender a certificate of registration issued under section 5 (4) to Registrar within 21 days of receipt of cancellation notice.

(5) Where a society fails to surrender the certificate of registration within the period provided for in subsection (4), every person who is an office-bearer of the society at the date of the cancellation of the society's registration shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Registrar.

10. (1) A society shall not change —

Consent of
Registrar

- (a) its name;
- (b) any provisions of its constitution;
- (c) any of its objects;
- (d) its office registered under this Act;
- (e) postal address to which all communications and notices may be addressed; and
- (f) officers or title of any officers,

without obtaining prior consent of the Registrar in writing.

(2) A society shall, within 14 days of effecting any change under this section, notify the Registrar of the changes and the Registrar shall register the changes.

(3) Where a society fails to comply with the provisions of this section, every office bearer of the society shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Registrar.

Publication of registration and cancellation

11. The Registrar shall by Notice in the *Gazette* publish the registration and cancellation of societies registered under this Act.

Cessation of existence of society

12. (1) A society shall notify the Registrar, in writing of cessation of existence of such society.

(2) The Registrar shall publish a notice in the *Gazette* calling upon a society to furnish the Registrar with proof of its existence within three months from the date of such publication.

(3) Where a society ceases to be a society under this Act, such society shall cease to operate as a registered society.

Particulars to be furnished by societies

13. (1) The Registrar may, by notice in writing, order a society to furnish him or her with the following particulars —

(a) a true and complete copy of the constitution and rules of the society;

(b) a true and complete list of office-bearers and members residing or present in Botswana;

(c) a true and complete return of the number of meetings held in Botswana within the period of six months immediately preceding the order, stating the place or places at which such meetings were held; and

(d) accounts, returns and other particulars as may be determined.

(2) A notice under subsection (1), shall specify the time not less than 21 days within which the particulars shall be supplied.

(3) Any order made by the Registrar in relation to any society under this section shall be binding upon every office-bearer served with an order and upon every person managing or assisting in the management of the society served with an order.

(4) Where a society fails to comply with the provisions of this section, every office bearer of the society shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Registrar.

(5) A person who supplies incorrect or incomplete particulars to the Registrar shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Registrar.

(6) The Registrar may, where it appears to him or her, to be in the interest of the members of a society, publish in the *Gazette*, a newspaper of wide circulation or any other manner as the Registrar may consider necessary, any matter furnished by or on behalf of such society to the Registrar under this section.

Office bearer

14. A person who —

(a) is an office-bearer of an illegal society;

(b) manages or assists in the management of an illegal society;

(c) solicits or collects money or subscriptions on behalf of an illegal society;

(d) knowingly is or acts as a member of an illegal society; or

(e) knowingly allows a meeting of an illegal society or to be held in any house, building or place belonging to or occupied by him or her, or over which he or she has control,

commits an offence and shall be liable to a fine not exceeding P50 000 or to imprisonment for a period not exceeding six years, or to both.

- 15.** (1) Where any books, accounts, writings, list of members, seals, banners or insignia of, or relating to, or purporting to relate to, any society are found in possession of any person, it shall be presumed, until the contrary is proved, that such person is a member of such society, and such society shall be presumed, until the contrary is proved, to be in existence at the time such books, accounts, writings list of members, seals, banners or insignia are so found. Presumptions of membership
- (2) Where any books, accounts, writings, list of members, seals, banners or insignia of, or relating to, any society are found in the possession of any person, it shall be further presumed, until the contrary is proved, that such person assists in the management of such society.
- 16.** (1) The Registrar shall by Notice published in the *Gazette* wind up a Society if — Winding up of society
- (a) two thirds majority of the members of the society resolved that the society be wound up; and
- (b) a society has failed to comply with the provisions of this Act.
- (2) The Registrar shall take into consideration any objection by any creditor, contributory, or other person interested.
- (3) The Registrar may, for the purpose of enabling a society to wind up its own affairs, suspend any operation of such a society.
- 17.** (1) In winding up a society, the assets shall be applied in payment of the costs, charges and expenses incurred in the winding up and claims of creditors. Application of assets and costs of winding up
- (2) The costs and charges incurred, and all advances made by the Registrar on account of the society, shall be costs in the winding up.
- (3) The Registrar may direct that property or monies remaining after costs and charges of winding up of a society be donated to any charitable organisation.
- 18.** (1) The Registrar may in the execution of his or her duties under this Act, apply to a judicial officer for a warrant of search where — Search warrants
- (a) a society is prejudicial to public peace, or to welfare or good order;
- (b) premises are used —
- (i) for meeting of an illegal society, or
- (ii) for the concealment, custody or deposit of any books, accounts, writings, list of members, banners, seals, insignia, arms or other articles belonging to any illegal society.
- (2) A judicial officer may by warrant referred to under subsection (1) permit any authorised officer to search any premises suspected to be used as a place of meeting of an illegal society.
- (3) A search warrant issued under subsection (1) shall —
- (a) be in writing;
- (b) bear the seal of the court issuing it; and
- (c) remain in force until executed or cancelled by the court which issued it.

(4) A search warrant may be issued on any day, including Sundays and public holidays, but may be executed only between the hours of sunrise and sunset unless the judicial officer, by the warrant specifically authorised it to be executed at any other time, in which case it may be executed.

Powers of Registrar to summon witness

19. (1) The Registrar may, in writing, summon before him or her any person to give any information of an existence or operations of an illegal society or any registered society.

(2) A person summoned shall attend at a place and time as specified in the summons, and produce all documents in his or her custody, possession or power relating to such society or suspected society, and answer truthfully all questions which the Registrar may put to him or her.

(3) A person who fails to comply with the provisions of this section shall be liable to an administrative fine not exceeding P25 000, as may be imposed by the Registrar.

(4) No statement made by a person summoned before the Registrar under this section shall subject him or her to any criminal prosecution, except a prosecution for failing to answer truthfully under this section.

Inspection of premises

20. (1) An authorised officer may at any time enter business premises to —

- (a) conduct a routine inspection for the purposes of ensuring that the operations of a society comply with the provisions of this Act;
- (b) caution a person on the premises about a contravention of this Act; or
- (c) require a person on the premises to furnish any information including documents in his or her possession relating to the activities conducted on the premises, and by whom the activities are conducted.

(2) A person who refuses an authorised officer entry into the premises shall be liable to an administrative fine not exceeding P25 000, as may be imposed by the Registrar.

Establishment of Advisory and Arbitration Council

21. There is hereby established a Council to be known as the Advisory and Arbitration Council.

Members of Council

22. (1) The Council shall consist of the following members appointed by the Minister —

- (a) six persons from different societies;
- (b) one person from the general public, with expertise in matters related to societies;
- (c) the Permanent Secretary of the Ministry responsible for registration of societies under this Act, who shall be an *ex-officio* member; and
- (d) a lawyer from the Attorney General's Chambers, who shall be an *ex-officio* member.

(2) The Minister shall appoint the Chairperson of the Council from the general public, with expertise in matters related to societies.

(3) The Vice Chairperson of the Council shall be elected by the members of the Council among their number.

(4) A member of the Council shall —

- (a) hold office for a period not exceeding four years; and
- (b) be eligible for re-appointment for a further period not exceeding four years.

(5) The Minister shall —

- (a) by notice in the *Gazette*, publish the appointment of the members of the Council, specifying the dates of appointment and the period for which they are appointed to the office of the Council; and
- (b) when specifying the period for which members of the Council are appointed, ensure that the appointment of one third or less of the members of the Council does not expire in one year.

23. The functions of the Council shall be to —

- (a) guide and advise the Minister on issues of registration of societies, which shall include to assess and —
 - (i) review matters referred to it by the Registrar, and
 - (ii) make recommendations on specific applications for registration, referred to it by the Registrar,
- (b) arbitrate in cases of dispute in the registered societies, and other disputes that may arise between societies; and
- (c) engage in the promotion and development of policy issues concerned with societies.

Functions of Council

24. (1) Subject to the provisions of this Act, the Council shall regulate its own procedure and establish such committees as it considers appropriate, and may delegate, to any such committee, any of its functions as it considers necessary.

(2) The Council shall meet —

- (a) at least once every three months;
- (b) whenever it considers necessary to conduct its business; or
- (c) when directed to do so by the Minister.

Meetings of Council

25. (1) The quorum at any meeting of the Council shall be a simple majority of the members.

(2) There shall preside, at any meeting of the Council —

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

(3) A decision of the Council on any question shall be by a simple majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

Quorum and procedure at meetings

26. (1) The Council may co-opt any person to attend any meeting of the Council on any matter for the purpose of assisting or advising the Council, but such person shall have no right to vote.

Co-opted members

(2) Any member or any person co-opted under subsection (1), present at a meeting of the Council at which any matter in which the member or the person co-opted, or their immediate family members, is directly or indirectly interested in a private capacity is the subject of consideration —

- (a) shall immediately after the commencement of the meeting, disclose the interest;
- (b) shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter; and
- (c) such interest shall be recorded in the minutes of the meeting at which it is made.

(3) A member or a person co-opted under subsection (1) who fails to disclose an interest under subsection (2) and a decision is made benefiting the member or the person co-opted, or their immediate family members, such decision shall be null and void to the extent that it benefits such member or such person co-opted, or their immediate family members.

(4) A member of the Council or a person co-opted under subsection (1) shall —

- (a) observe and preserve the confidentiality of all matters coming before the Council, and such confidentiality shall subsist even after the termination of their terms of office or their mandate; and
- (b) where confidential information is revealed to them through working with the Council, not disclose the information to any other person unless required to do so in terms of any written law or purposes of judicial proceedings.

(5) Any member of the Council or any person co-opted under section (1) shall be paid such remuneration, and such allowances, if any, as the Minister may determine.

(6) A member of the Council or any person co-opted who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

Service of documents

27. (1) Every order, notice, summons or other document issued under this Act, shall be considered to have been validly served on the person to whom it is addressed if it is personally served, or sent by pre-paid registered post addressed to him or her at the registered office of the society with which he or she is concerned.

(2) Every order, notice or other document issued under this Act, or under any regulations made under this Act, shall be considered validly served on a society if it is sent by pre-paid registered post addressed to the society at its registered office.

(3) Any document served by being sent by registered post shall be considered to have reached the person or society to whom or to which it is addressed within 96 hours of posting.

28. In any prosecution under this Act, it shall be no objection to the admissibility of evidence as to the constitution, objects or activities of any society that the witness tendering such evidence is not or has not been a member of any illegal society.

Evidence

29. (1) The Registrar shall —

Accounts and audits

- (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 a society;
- (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 a society as the Minister responsible for finance may require.

(2) The accounts of a society 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 Minister.

(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 the —

- (a) 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) accounts and related records of a society have been properly kept; and
- (c) society has complied with all financial provisions of this Act with which it is the duty of the Registrar to comply with.

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

30. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

Regulations

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) prescribing the manner of registration of societies under this Act;
- (b) regulating or restricting changes of the name or objects of societies;
- (c) prescribing the forms which may be used for carrying out the provisions of this Act;
- (d) for securing the submission to the Registrar of accounts relating to the assets and liabilities, and the income and expenditure, of societies, in such form and at such time and in respect of such period as may be prescribed;
- (e) prescribing the fees payable under this Act;

Repeal of
Cap. 18:01
Savings and
transitional
provisions

- (f) securing the submission to the Registrar of annual or other periodical returns relating to the constitution, objects, membership and management of societies in such form as may be prescribed;
- (g) declaring any society not to be a society for the purposes of this Act; and
- (h) prescribing anything to be prescribed under this Act.

(3) Any regulations made under this section may provide that any person who contravenes any provision of such regulations commits an offence and shall be liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding seven years, or to both.

31. The Societies Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

32. (1) Every existing society shall apply to the Registrar for re-registration in such form as may be prescribed.

(2) An application referred to in subsection (1), shall be made within 12 months after the commencement of this Act or such longer period not exceeding twelve months as may be specified by the Minister by Order published in the *Gazette*.

(3) An existing society that has not made an application for the re-registration within the transition period shall be deemed to be de-registered and shall be removed from the register of societies by the Registrar.

(4) A society that has been removed from the register of societies may apply to the Registrar for registration in accordance with section 5 of this Act.

(5) All subsidiary legislation made under the repealed Act, and in force immediately prior to coming into operation of this Act, shall in so far as is not consistent with the provisions of this Act, continue in force as if made under this Act.

PASSED by the National Assembly this 3rd day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.