

ENVIRONMENTAL ASSESSMENT ACT, 2011

No. 10

of 2011



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An Act to provide for environmental impact assessment to be used to assess the potential effects of planned developmental activities; to determine and to provide mitigation measures for effects of such activities as may have a significant adverse impact on the environment; to put in place a monitoring process and evaluation of the environmental impacts of implemented activities and to provide for matters incidental to the foregoing.

Date of Assent: 17/06/11

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

1. This Act may be cited as the Environmental Assessment Act, 2010, and shall come into operation on such date as the Minister may, by order, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —

Interpretation

“activity” includes a project, programme, plan or policy;

Cap. 18:01

“Association” means a body registered under the Societies Act, which adequately demonstrates to the Minister that it is representative of the majority of Environmental Assessment Practitioners practising in Botswana at any given time;

“Board” means the Environmental Assessment Practitioners Board established under section 20 of the Act;

“Chairperson” means the Chairperson of the Board;

“committee” means a committee of the Board;

“competent authority”, in relation to an activity under this Act, means the Department of Environmental Affairs;

“developer” means a person intending or planning to undertake a new activity or repair or extend an existing activity;

“Director” means the Director responsible for environmental affairs;

“environment” includes the physical, ecological, archaeological, aesthetic, cultural, economic, institutional, human health and social aspects of the surroundings of a person;

“environmental audit” means work done to identify and evaluate compliance of the statement and the residual environmental impact of an existing activity, the effectiveness of mitigation measures and the functioning of monitoring mechanisms;

“environmental impact” means any positive or negative effects caused by an activity on the environment;

“environmental impact assessment” means the process and procedure for evaluating and predicting the likely environmental impact of a proposed activity;

“evaluation report” means a report on studies carried out to ensure that environmental considerations are taken into account when an activity is implemented;

“local authority” includes a land board;

“member” means a member of the Board elected, appointed or nominated under section 22;

“mitigation measures” means the reduction or control of the adverse environmental impact of an activity and includes restitution for any damage to the environment caused by such activity through engineering works, technological improvements, management measures or compensation to ameliorate any loss suffered by a person;

“practitioner” means an Environmental Assessment Practitioner registered under section 37;

“project brief” means a description of the likely environmental impact of an activity provided by the applicant as part of the application;

“register” means a register of practitioners established under section 38;

“relevant technical department” means a government department or local authority responsible for monitoring an activity undertaken under this Act, by virtue of that department or local authority having the necessary technical expertise to do so;

“scoping” means consultations with concerned government departments, local authorities, non-governmental organizations, members of the public and any other interested persons, to determine the extent of the likely environmental impact of a proposed activity;

“statement” means a report of the environmental assessment study;

“strategic environmental assessment” means a process for evaluating the environmental consequences of proposed policy, plan or programme initiatives in order to ensure that they are fully included and appropriately addressed at the earliest stage of decision making, on par with economic and social considerations;

“threshold”, in relation to an environmental impact assessment of an activity, means a measurable level or limit of an output resulting from the operation of a proposed activity indicative of the activity’s environmental impact; and

“terms of reference” means a document which details the main environmental issues which must be addressed in an environmental impact study.

Application of
Act

3. (1) This Act applies to the activities in respect of which the Minister may prescribe by regulations.
 - (2) Regulations made pursuant to subsection (1) shall prescribe —
 - (a) a list of activities which are likely to cause significant adverse effects on the environment, or the locations that may be environmentally sensitive, in respect of which a statement shall be mandatory;

- (b) threshold determinations of environmental impact assessment with respect to the activities prescribed under paragraph (a); and
 - (c) criteria which shall be used to determine the likely effects of a proposed activity in order to further determine whether or not a statement is required for the activity.
- (3) The Minister may, in writing, upon application for exemption by a person implementing an activity referred to under subsection (2), exempt the activity from the provisions of this Act.
- 4.** (1) No person shall undertake or implement an activity prescribed under section 3 unless —
- (a) such person has applied to a licensing authority for authorization to undertake such activity and authorisation has been issued under section 12; and
 - (b) the environmental impact of the proposed activity is fully taken into account in accordance with the provisions of this Act.
- (2) Any person who undertakes or implements an activity in contravention of subsection (1) commits an offence and is liable to a fine not exceeding P100 000, or to a term of imprisonment not exceeding five years, or to both.
- (3) A person who contravenes subsection (1) shall rehabilitate the area affected by the adverse environmental impact of the implemented activity.
- (4) In this section, “rehabilitate” means the reinstatement or restoration to a normal or functional environmental state.
- (5) A person who fails to rehabilitate the area referred to under subsections (3) commits an offence and is liable to a fine not exceeding P1 000 000, or to a term of imprisonment not exceeding 15 years, or to both.
- 5.** (1) A licensing authority shall, before issuing a permit, licence, consent or approval to any person who has applied to implement an activity prescribed under section 3, ensure that authorisation has been issued for the proposed activity in accordance with this Act.
- (2) In this section, “licensing authority” means any authority vested with the responsibility of issuing permits, licences, consent or approval for any of the activities prescribed under section 3.

Requirements
to undertake
an activity

Ensuring
issuance of
authorisation

PART II – *Preparation of Environmental Impact Assessment Documentation*

- 6.** (1) Every —
- (a) application made to obtain authorisation for a proposed activity shall contain or be accompanied by a project brief which shall include a description of the activity; and
 - (b) formulation of a policy, programme, legislation, physical plan, shall contain or be accompanied by an approved strategic environmental assessment, which strategic environmental assessment shall contain a description of a policy, programme, legislation, development plan or physical plan, as the case may be.

Requirements
for
authorisation

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Public participation and scoping exercise

Terms of reference

(2) An application made under subsection (1) (a) shall be in the prescribed form and shall be accompanied by such fee as may be prescribed.

(3) Where the competent authority is satisfied that all relevant information is available in the application and that the activity can be carried out without any adverse environmental impact, the competent authority shall authorise the implementation of the activity.

(4) Where the competent authority finds that information provided in the application is insufficient, the competent authority shall require and specify to the applicant the additional information to be provided.

(5) The competent authority may upon receipt of an application under subsection (1) or at its own discretion request the developer to submit an environmental management plan.

(6) Where the competent authority requests for an environmental management plan under subsection (5) the competent authority may request the developer to consult stakeholders.

7. (1) An applicant shall before undertaking or implementing an activity engage a practitioner to do a scoping exercise.

(2) The applicant shall during a scoping exercise —

- (a) publicise once the intended activity, its effects and benefits in the mass media using the official languages for a period of not less than 21 days; and
- (b) after the expiration of the period of 21 days, ensure that the practitioner referred to under subsection (1) holds meetings with the affected people or communities to explain the nature of the activity and its effects.

8. (1) Where, upon a consideration of all the information submitted by the applicant, the competent authority decides that an environmental impact assessment is required, the authority shall inform the applicant, in writing, to prepare terms of reference for the environmental impact assessment, which terms of reference shall be in the prescribed form.

(2) An applicant shall, after complying with section 7 and subsection (1) of this section, submit the terms of reference and the results of the scoping exercise to the competent authority.

(3) In considering the terms of reference, the competent authority shall consult with relevant technical departments or local authorities, and may —

- (a) conduct such investigation as it considers necessary to ascertain the validity of the scoping exercise; or
- (b) request the applicant to provide additional information for a better understanding of the terms of reference.

(4) Where the competent authority is satisfied that the terms of reference will adequately assist in guiding the environmental impact assessment of the proposed activity, the competent authority shall approve the terms of reference within 28 days of receipt of the terms of reference and the scoping report.

(5) An applicant shall prepare the terms of reference for the detailed environmental impact assessment study after the scoping exercise has been undertaken.

(6) Where an applicant requires the services of a practitioner to prepare the terms of reference required in terms of subsection (1), the applicant shall appoint the practitioner at the applicant's own expense.

9. (1) Where the competent authority determines that the proposed activity is likely to have a significant adverse environmental impact, it shall require that such activity undergo an environmental impact assessment or a strategic environmental assessment, the costs of which shall be borne by the developer.

Environmental assessment and statement

(2) An environmental impact assessment shall identify and evaluate the environmental impact of an activity with particular reference to the —

- (a) health, safety or quality of life of people;
- (b) archaeological, aesthetic, cultural or sanitary conditions of the environment; and

(c) configuration, quality and diversity of natural resources.

(3) Where the competent authority determines that an environmental impact assessment, environmental management plan or a strategic environmental assessment be made under subsection (1), upon being informed in writing about the decision, the developer shall, before undertaking or implementing the activity, engage a practitioner to prepare a statement which shall be submitted by the developer to the competent authority within the period of time prescribed in the approved terms of reference.

(4) The statement prepared under subsection (3) shall be in a form prescribed by the Minister.

(5) A person who contravenes subsection (3) commits an offence and is liable to a fine not exceeding P1 000 000, or to a term of imprisonment not exceeding 15 years, or to both.

PART III – *Review Process of Environmental Impact Statement*

10. (1) The competent authority shall, within 60 days of receiving a statement from a developer, examine the statement to determine whether such statement complies with the requirements prescribed by the Minister.

Public review of statement

(2) Where the statement complies with the requirements prescribed by the Minister, the competent authority shall —

(a) place, at the developer's expense, a notification in the *Gazette* and in a newspaper circulating at least once weekly using the official languages, for four consecutive weeks, inviting comments or objections from those persons who are most likely to be affected by the proposed activity and other interested persons, stating the —

- (i) nature and magnitude of the activity,
- (ii) location of the activity,
- (iii) anticipated environmental impact of the activity, and
- (iv) proposed mitigation measures to respond to the negative environmental impact; and

(b) in its decision making, consider the comments or objections raised by persons who are likely to be affected by the proposed activity and other interested persons.

(3) The competent authority shall carry out or cause to be carried out the review of environmental assessment statements at the competent authority's own expense.

Conduct of
public hearing

- 11.** (1) The competent authority may hold a public hearing if —
(a) after examining the statement, the competent authority is of the opinion that the activity is of such a nature that the public should have the opportunity to make submissions or comments at a public hearing; or
(b) the public concern over the activity is that the activity may have a significant adverse impact on the environment.

(2) The Minister may, in consultation with the competent authority, prescribe the procedure for conducting a public hearing.

(3) The competent authority shall, after a public hearing, consider the findings in determining the adequacy of the environmental impact statement.

Approval of
statement

- 12.** (1) Where the competent authority's review of the statement is complete, the competent authority shall —

- (a) grant authorisation to the developer, on such terms and conditions as the competent authority considers necessary, where —
(i) the competent authority is satisfied that the statement sufficiently identifies the environmental impact likely to be caused, and
(ii) the prescribed mitigation measures in the statement, to avert or minimise the potential adverse environmental impact, are affective and sufficient; or
(b) where the competent authority is of the view that —
(i) the statement does not sufficiently identify the environmental impact likely to be caused, or
(ii) the prescribed mitigation measures to avert or minimise the potential adverse environmental impact, are insufficient and ineffective, afford the developer an opportunity to comply with the provisions of the Act; or
(c) reject the statement, where the developer fails to satisfy the conditions under paragraph (b).

(2) In deferring or rejecting the statement, the competent authority shall furnish the applicant with a written statement of the reasons for its decision.

(3) The competent authority may, in issuing an authorisation, prescribe, in writing, specific requirements for monitoring during and after implementation of the proposed activity, by the technical departments, local authorities and the developer.

(4) Any person who gives information to the practitioner or competent authority which is false or misleading in an environmental assessment statement, project brief, scoping report, environmental management plan or strategic environmental assessment statement commits an offence and is liable to a fine not exceeding P100 000, or to imprisonment for a term not exceeding five years, or to both.

Appeals

13. (1) A person aggrieved by a decision of the competent authority may appeal to the Appeals Committee within 30 days of receiving the decision of the competent authority.

(2) The Minister, shall by order establish an Appeals Committee referred to under this section.

PART IV – Authorisation of a statement

14. An authorisation granted under section 12 (1) (a) shall be valid for such period as may be stipulated therein and may be subject to renewal at the end of such period.

Validity of an authorisation

15. (1) The competent authority may revoke or modify an authorisation to implement an activity where there is an unanticipated irreversible adverse environmental impact, or a developer fails to comply with any term or condition subject to which the developer's authorisation was issued.

Revocation or modification of authorisation

(2) The competent authority shall not revoke or modify any authorisation granted to a developer until the competent authority has, by notice in writing, given the opportunity to the developer concerned, to —

- (a) rectify any contravention; or
- (b) show cause, within a period not exceeding 21 days from the date of such notice, why the authorisation should not be revoked or modified.

(3) The competent authority shall publish a notice of any revocation or modification made under this section, in two consecutive issues of —

- (a) the *Gazette*; and
- (b) two newspapers in circulation in Botswana.

16. (1) No person shall transfer, assign or encumber in any way, without the written consent of the competent authority, an authorisation issued under section 12 (1) (a).

Transfer of authorisation

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a period not exceeding three months, or to both.

17. In assessing applications for an authorisation under this Act, and in making a decision as to whether it ought to issue or renew an authorisation under this Act, the competent authority shall take into account the contents of the terms of reference, the statement, the recommendations of other government departments, local authorities and the comments and objections of interested persons and the public.

Decision making by competent authority

PART V – Post Environmental Impact Assessment of Implemented Activities

18. (1) The relevant technical department, local authority or developer, shall, during and after implementation of an activity, monitor the implementation of the activity to determine compliance with the agreed mitigation measures.

Monitoring programme and evaluation report

(2) The developer shall submit an evaluation report to the relevant technical department or local authority, at such times as the department or local authority shall determine.

19. (1) The competent authority shall carry out or cause to be carried out at its own expense, environmental audits.

Environmental audit by competent authority

(2) The competent authority shall determine the scope of the audit carried out under subsection (1).

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- (3) After carrying out an environmental audit under subsection (1), the competent authority may require a developer to take —
- (a) specific mitigation measures to ensure compliance with predictions made in the statement; or
 - (b) mitigation measures to address environmental impacts not anticipated at the time of the authorisation.
- (4) Where the developer fails to comply with the provisions of subsection (3), the competent authority may revoke or modify the authorization.

PART VI – *Establishment, Management and Functions of Board*

Establishment of Board	<p>20. (1) There is hereby established a Board to be known as the Environmental Assessment Practitioners Board.</p> <p>(2) The Board shall be a body corporate having perpetual succession and a common seal capable of suing and be sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.</p>
Seal of Board	<p>21. (1) The seal of the Board shall be such a device as may be determined by the Association and shall be kept and applied by the Executive Secretary.</p> <p>(2) The affixing of the seal shall be authenticated by the Chairperson or Vice Chairperson and the Secretary or any other person authorised in that capacity by the resolution of the Board.</p> <p>(3) Any contract or instrument which, if entered into, or executed by a person except the Executive Secretary, will not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Executive Secretary or any other person generally or specifically authorised by the Board in that capacity.</p>
Membership of Board	<p>22. (1) The Board shall consist of the following eleven members —</p> <ul style="list-style-type: none">(a) seven persons excluding public servants, who shall be members of the Association and elected by the Association;(b) three persons appointed by the Minister, who may or may not be members of the Association; and(c) a legal adviser, nominated by the Association. <p>(2) Board members who are non-citizens shall, prior to their appointment, have been resident in Botswana and have been members of the Association for not less than three years prior to their appointment.</p> <p>(3) The Chairperson and Vice Chairperson shall be elected by the members of the Board from among their number.</p>
Association to elect members	<p>23. The Association shall, within three months of the coming into force of this Act, elect members to the Board in accordance with section 22 (1) (a) and (c).</p>

- 24.** The Board shall —
- (a) register and certify the practitioners in terms of section 38 of this Act;
 - (b) perform other activities in order to promote the sustainable management of the environment through the realisation of quality environmental assessment in Botswana;
 - (c) provide relevant authorities, development proponents and the public in general with quality assurance regarding Environmental Assessment Practitioners appointed to conduct and regulate environmental assessments by
 - (i) establishing criteria (education, professional experience, competency and continued professional development requirements) and procedures for registration of practitioners,
 - (ii) upholding a defined Code of Conduct and acting in the best interests of the environment, sustainable development and the public good, and
 - (iii) establishing disciplinary procedures and sanction mechanisms;
 - (d) promote continued professional development for practitioners;
 - (e) promote awareness of the purpose and practice of practitioners;
 - (f) establish and maintain a register of individuals who are qualified to operate as practitioners;
 - (g) liaise with the Tertiary Education Council established under the Tertiary Education Act, and any other relevant body, in relation to the accreditation of education institutions;
 - (h) determine fees payable to the Board by registered persons;
 - (i) prescribe and enforce a Code of Conduct for practitioners;
 - (j) define the type of work to be performed by practitioners;
 - (k) advise the Minister on environmental assessment issues or issues that may impact on sustainable development;
 - (l) communicate to the relevant government departments, information on matters of public importance acquired during the course of its work; and
 - (m) generally, do all such things as the Board deems necessary or expedient.
- 25.** (1) A member shall hold office, in the case of an —
- (a) appointed member, for such period, not exceeding three years, as may be specified in the notice appointing him or her; and
 - (b) elected member, for a period of two years:
- Provided that —
- (i) a member elected immediately after the commencement of this Act shall hold office for a period of one year, and
 - (ii) on the expiry of his or her term of office he or she shall continue to hold office until a successor has been elected or a period of three months has elapsed, whichever occurs first.
- (2) Notwithstanding the provisions of subsection (1), the Chairperson shall hold office for a period of three years.
- (3) A member whose term of office expires shall be eligible for re-appointment or re-election, as the case may be, as a member.

Powers and functions of Board

Cap. 57:04

Tenure of office of member

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Minister's power to appoint members required to be elected

Disqualification, removal and resignation

- 26.** (1) The Minister shall appoint a member where the Association fails, neglects or refuses to elect a member —
- (a) within 21 days of notification by the Minister to elect a member, in accordance with section 22 (1) (a) and (c); or
 - (b) within the period referred to in section 28 (1) to fill a vacancy in terms thereof.
- (2) A member appointed under —
- (a) subsection (1) (a) shall hold office for such period, not exceeding two years, as the Minister may determine; and
 - (b) subsection (1) (b) shall hold office in accordance with section 28, and shall be deemed to have been duly elected to the Board.
- 27.** (1) No person shall be appointed as a member, nor shall any person be qualified to hold office as a member, who has —
- (a) in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared insolvent or bankrupt, and has not been rehabilitated or discharged, or
 - (ii) made an assignment, or arrangement or composition with his creditors, which has not been rescinded or set aside; or
 - (b) within a period of ten years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence, 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 has been suspended or not, and for which he or she has not received a free pardon.
- (2) The Minister may, after consulting the Board and by notice in writing, remove a member from office where the member —
- (a) is absent without reasonable cause for three consecutive meetings of the Board of which he or she has had notice;
 - (b) is inefficient;
 - (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
 - (d) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board;
 - (e) has failed to comply with the provisions of this Act; or
 - (f) becomes a member of the National Assembly or a Councillor of a local authority.
- (3) The Minister shall, 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 of the Board.

- (4) A member may resign from office by giving 30 days notice in writing to the Minister.
- (5) The office of a member shall become vacant after —
- (a) a period of 30 days from the date a ruling against the member is made on all appeals made in respect of a conviction against him or her under subsection (1) (b);
 - (b) a period of 30 days has elapsed from the date the member gives notice in writing to the Minister under subsection (3), of his or her intention to resign;
 - (c) a period of 30 days has elapsed from the date the member is given notice in writing by the Minister to vacate office; or
 - (d) the member is summarily dismissed by the Minister on grounds of contravening a provision of this Act or misconduct under subsection (2) (d).
- (6) For the purposes of subsection (2) (d), “misconduct” includes any act done without reasonable excuse by a member which —
- (a) amounts to failure to perform, in a proper manner, any duty imposed on him or her as a member;
 - (b) is prejudicial to the efficient conduct of the Board; or
 - (c) tends to bring the Board into disrepute.

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

Filling of vacancies

(2) On the death or vacation of office of an appointed member, the Minister shall appoint another person to fill the vacancy.

(3) Subsections (1) and (2) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

29. (1) The Board may from time to time appoint committees either of a general or special nature consisting of such number of members, with such qualifications, as the Board may determine.

Committees of Board

(2) Notwithstanding the generality of subsection (1), the Board may appoint —

- (a) a Disciplinary Committee, which shall be responsible for —
 - (i) responding to complaints regarding the conduct or practices of practitioners,
 - (ii) conducting hearings within a reasonable period of time to investigate complaints based on the prescribed procedures, and
 - (iii) deciding on disciplinary measures or sanctions to be taken, where necessary, in regard to registered practitioners;

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- (b) a Standards and Criteria Committee, which shall be responsible for periodically reviewing the adequacy, validity and relevance of the standards, criteria and procedures applied by the Disciplinary and Professional Development Committees and making recommendations to the Board on —
 - (i) possible amendments to the required criteria for certification,
 - (ii) amendments to criteria applied in the internal process of assessing the competence of certified practitioners,
 - (iii) amendments to the Code of Conduct,
 - (iv) amendments to the procedures followed by the Disciplinary and Professional Development Committees,
 - (v) annual subscription fees, registration fees and tariff of professional fees, and
 - (vi) review of accredited tertiary institutions; or
 - (c) A Professional Development Committee, which shall be responsible for creating an enabling environment for professional development and mentoring of registered practitioners and responsible for assessing the Professional Development reports of applicants for re-registration and making recommendations to the Board on —
 - (i) the adequacy of the Continuing Professional Development Reports of applicants for maintaining registration,
 - (ii) improvements that could be made to the criteria, standards and procedures applied in the registration and re-registration processes.
- (3) The Board may delegate any of its powers, functions or duties to a committee appointed under this section.

Election of
Chairperson
and Vice
Chairperson

- 30.** (1) At the first meeting of the Board, the members shall elect, from among their number —
 - (a) Chairperson; and
 - (b) a Vice Chairperson,who shall hold office for such period, being not less than 12 months, as the Board may from time to time determine unless he or she ceases to be a member.
(2) On the expiry of the term of office of the Chairperson or Vice Chairperson or where the Chairperson or Vice Chairperson vacates his or her office as such, a new Chairperson or Vice Chairperson shall be elected by the members from among their number at the next meeting of the Board or as soon thereafter as may be convenient.
(3) The Chairperson or Vice Chairperson may vacate his or her office as such even though he or she remains a member.
(4) The Vice Chairperson shall, whenever the Chairperson is absent or unable to carry out his or her functions, exercise the functions of the Chairperson during the period that the Chairperson is absent or unable to act as Chairperson.

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

Meeting of
Board

(2) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet at least three times in a year for the transaction of business.

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

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

(5) The quorum at any meeting of the Board shall be one half of the members.

(6) There shall preside, at any meeting of the Board —

(a) the Chairperson;

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

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

(7) A decision of the Board on any question shall be by a 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.

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

(9) A member of the Board or person assisting the Board under subclause (8) shall be paid out of the funds of the Board, such remuneration and allowances, if any, as the Board may determine.

32. (1) The Chairperson or a Chairperson of a committee may at any time convene a meeting of the committee.

Meetings of
committees of
Board

(2) At any meeting of a committee the majority of members of the committee or such other number as may be fixed by the Board in any particular case shall form a quorum.

(3) A member of a committee shall be paid out of the funds of the Board, such remuneration and allowances, if any, as the Board may determine.

(4) Any reference in this Act to the Board or to the Chairperson of the Board in relation to the exercise of any power which the Board has assigned to a committee shall be construed as including a reference to that committee or to the Chairperson of that committee as the case may be.

33. (1) Where a member of the Board or any committee is present at a meeting of the Board or any committee, at which meeting a matter which is the subject of consideration is one in which he or she is directly or indirectly interested in a private capacity, the member of the Board or any committee shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question affecting such matter.

Disclosure of
interest

A.82

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

(3) Where a member of the Board or any committee fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board or committee is made benefiting such member, such decision shall be null and void.

(4) A member of the Board or any member of a committee who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding three months, or to both.

34. A decision or act of the Board done under the authority of the Board shall not be invalid by reason only of the fact that —

- (a) the Board did not consist of the full number of members for which provision is made under section 22;
- (b) the various members did not have the qualifications prescribed under section 22; or
- (c) a disqualified person acted as a member of the Board.

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

(2) The Board shall, when so requested by the Minister, furnish him or her with advice on matters in connection with the profession of practitioner or cognate matters and shall communicate, to the Minister, information acquired by it in the course of its duties on matters regarded by it as being of public importance.

PART VII – *Executive Secretary, Registration and Certification*

Executive Secretary, etc.

36. (1) The Board shall appoint an Executive Secretary of the Board on such terms and conditions as the Board may determine.

(2) No person shall be appointed as Executive Secretary unless the person holds such qualifications and has such experience as the Board may determine.

(3) The Executive Secretary shall be responsible for the day-to-day running of the Board.

(4) The Executive Secretary shall be the Secretary of the Board and every committee of the Board but shall have no right to vote.

37. (1) A person shall not practise as an Environmental Impact Assessment Practitioner unless such person is registered and certified under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P50 000, or to imprisonment for a period not exceeding two years, or to both.

38. (1) Subject to the provisions of this Act, the Board shall establish and maintain a register of practitioners.

(2) The register shall be kept at the offices of the Board and shall be open to inspection during office hours to any member of the public.

Registration

Register

Validity of decisions and acts of Board

Reports to the Minister

- (3) The Executive Secretary shall —
- (a) keep the register in such form as may be prescribed;
 - (b) enter in the register, in relation to a practitioner —
 - (i) his or her name,
 - (ii) his or her address,
 - (iii) his or her qualification,
 - (iv) his or her date of first registration, and
 - (v) such other particulars as the Board may from time to time determine;
 - (c) make in the register any necessary alterations to the particulars referred to under paragraph (b);
 - (d) remove, from the register, the name of a practitioner who dies or ceases to practise as a practitioner;
 - (e) when required to do so under this Act or in pursuance of an order of a court —
 - (i) register a practitioner or suspend, from practice, a practitioner, and
 - (ii) remove, from the register, the name of a practitioner;
 - (f) on the instructions of the Chairperson, convene meetings of the Board or committee of the Board;
 - (g) maintain records and minutes of meetings convened under paragraph (f);
 - (h) appoint, after consultation with the Board, such other staff of the Board as the Board considers necessary;
 - (i) carry out any other duties assigned to him or her by the Board; and
 - (j) cause to be published by notice in the Gazette, at the beginning of each year in January, a list containing the names, addresses and qualifications of all registered practitioners remaining on the register at the close of the previous year.

39. A person may apply to the Executive Secretary to be registered and certified as a practitioner and shall submit with the application the following —

Procedures for registration

- (a) certificates of qualifications as may be prescribed;
- (b) a curriculum vitae;
- (c) any other information as may be required; and
- (d) such registration fees as may be prescribed shall serve as the annual subscription fee for that year.

40. (1) A person shall be issued with a certificate of practice on being registered, which shall indicate the professional category to which such person belongs, in terms of the prescribed criteria.

Certificate of practice

(2) A person duly certified by the Board shall be entitled to place letters signifying that they are certified practitioners.

(3) There shall be paid to the Board in respect of each practising certificate to be issued, such annual practising fee as may be prescribed.

(4) Every practising certificate issued shall have effect from the date of which it is issued and shall expire after 12 months.

Provided that where the name of any practitioner is removed from or struck off the register, the practising certificate of that practitioner shall expire forthwith.

A.84

- (5) If any person fails to obtain a practising certificate for any year, the Board shall notify such person of the provisions of this section by means of a registered letter posted to him or her at his or her last known address, and if, within 90 days of the posting of such letter the person has not obtained such certificate, the Board shall remove the name of such person from the register.
- Registration of non-residents
- 41.** An applicant who is a non-resident of Botswana shall be registered and certified when the Board is satisfied that —
- (a) the applicant has complied with the prescribed certification criteria;
 - (b) the applicant holds a valid recognized certificate to practise as a practitioner;
 - (c) there is a reciprocal recognition of the Botswana Association in the country where the applicant originates; and
 - (d) the applicant has paid such fees as may be prescribed.
- Refusal to register
- 42.** (1) The Board shall refuse the registration of an applicant where it is satisfied that the applicant —
- (a) has at any time, whether within or outside Botswana —
 - (i) been removed from an office of trust on account of improper conduct, or
 - (ii) been convicted of extortion, bribery, theft, fraud, forgery or uttering a forged document or perjury and sentenced in respect thereof to imprisonment without the option of a fine; or
 - (b) notwithstanding that he or she is otherwise qualified, is not a fit person to be registered by reason of —
 - (i) his or her mental health,
 - (ii) the fact that he or she is not of good character or reputation, or
 - (iii) any conduct of his or hers which, if he or she had been registered, would have constituted improper or disgraceful conduct to the profession of practitioners.
- (2) The Board shall, before refusing registration under subsection (1), hold an inquiry under Part VIII, and the provisions of this Part shall, with the necessary modifications, apply as if the applicant were registered.
- Suspension of registration
- 43.** (1) The Board may suspend the registration of a practitioner where an inquiry under Part VIII has found the practitioner guilty of any allegation referred to in section 50 or 53.
- (2) A practitioner who has been suspended in accordance with subsection (1) shall be disqualified from performing the work of a practitioner and his or her registration shall be deemed to be cancelled until the period of suspension has expired.
- Removal from the register
- 44.** (1) The Board shall order the removal from the register of —
- (a) the name of a practitioner who —
 - (i) has failed to notify the Executive Secretary of his or her present address, within six months of a notice being sent to him or her by registered letter by the Executive Secretary requesting him or her to so notify the Executive Secretary:
- Provided that where such registered letter is returned to the Executive Secretary by reason of it being unclaimed or for any other reason, the Board may, as soon as practicable direct that the name of the practitioner be removed from the register,

- (ii) has requested that his or her name be removed from the register and has lodged an affidavit stating that no disciplinary inquiry under Part VIII or criminal proceedings are being or are likely to be instituted against him or her in connection with his or her practice under this Act, or
 - (iii) has been found guilty by an inquiry under Part VIII; or
 - (b) any entry which is proved, to the satisfaction of the Board, to have been made in error or through fraudulent representation or concealment of material facts or in circumstances not authorized by this Act.
- (2) The Executive Secretary shall remove, from the register, the name of a practitioner who the Board has, in accordance with subsection (1), directed that his or her name be removed.

(3) Where the Executive Secretary removes, from the register, the name of a practitioner or enters, in the register, the suspension of a practitioner, he or she shall —

- (a) enter, in the register, a record of the reasons therefor; and
- (b) notify the practitioner in writing of the reasons therefor.

(4) A certificate of registration issued to a practitioner whose name has been removed from the register in terms of this section shall be deemed to have been cancelled on the date of the removal and the practitioner shall be deemed not to be registered with effect from that date.

45. Where the name of a practitioner has been removed from the register or the registration of the practitioner has been suspended, the Board may, either of its own volition, or on the application of the practitioner concerned made in such form as may be prescribed, and after holding such inquiry as the Board may consider necessary, direct that the name of the practitioner be restored to the register.

Restoration of
name to the
register

46. A person aggrieved by a decision of the Board —

- (a) refusing to register him or her as a practitioner;
- (b) suspending his or her registration; or
- (c) removing his or her name from the register,

may, after giving written notice of his or her intention to appeal to the Board, and within 30 days of the date on which notice is given to him or her by the Executive Secretary of the refusal, suspension or removal, appeal to the High Court.

Appeal against
refusal to
register, etc.

47. (1) A practitioner whose name has been removed from the register under section 40 shall return, by registered letter to the Executive Secretary, his or her certificate of practice within 30 days of the date upon which he or she is directed in writing by the Executive Secretary to do so.

Return of
practising
certificate to
Executive
Secretary

(2) A person who refuses to return a certificate of practice in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding three months, or to both.

A.86

Register to be
prima facie
evidence

48. (1) The register shall be prima facie evidence of the matters set out therein.

(2) Notwithstanding the generality of subsection (1), a certificate purporting to be signed by the Executive Secretary to the effect that —

- (a) the name of a person does not appear in the register shall be prima facie evidence that the person is not a practitioner;
- (b) the name of a person appears in the register shall be prima facie evidence that the person is a practitioner; or
- (c) a practitioner has been suspended from practice as such for the period specified in the register shall be prima facie evidence that the person has been suspended from practice for the period.

(3) A copy of an entry in the register, a document in the custody of the Executive Secretary or an extract from the register or from any document purporting to be certified by the Executive Secretary, shall be admitted in evidence in all courts without further proof or production of the original.

Offences in
connection
with the
register

49. Any person who —

- (a) makes or causes to be made an unauthorized entry, alteration or deletion in the register;
- (b) procures or attempts to procure for himself or herself or another person, registration or a certificate of practice by means of fraud, false pretence or concealment of a material fact;
- (c) makes or causes to be made in connection with an application for registration , a false declaration in a document used for the purpose of establishing his or her identity;
- (d) willfully destroys or renders illegible an entry in the register;
- (e) without the permission of the holder, willfully destroys or renders illegible a certificate of practice; or
- (f) forges or utters, knowing the same to be forged, a document purporting to be a certificate of practice,

commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding three months, or to both.

PART VIII – *Disciplinary and other Inquiry*

Inquiries by
Board

50. (1) Subject to the provisions of this Act, the Board may hold an inquiry into any allegation made in writing by a member of the public —

- (a) that a practitioner has acted or omitted to act, and the act or omission amounts to improper or disgraceful conduct; or
- (b) in respect of matters referred to in section 54.

(2) The Board shall cause to be sent, to a practitioner against whom an allegation has been made under subsection (1), a registered letter to his or her address as shown in the register, containing a notice setting out the allegation against him or her and the Board shall afford the practitioner an opportunity to be heard either by himself or herself or by a legal representative.

(3) The Board shall invite and have present, during its deliberations under this section, a legal practitioner of their choice, to render legal advice to the Board, during the course of an inquiry under this Part.

- (4) For the purposes of an inquiry under this section, the Board shall —
 (a) administer oaths;
 (b) summon persons to attend and give evidence; and
 (c) order the production of documents.

(5) All summonses and orders issued under the hand of the Chairperson or Vice Chairperson shall be deemed to be issued by the Board.

(6) The Chairperson, or in his or her absence the Vice Chairperson, shall record or cause to be recorded a summary of any oral evidence given at an inquiry under this section.

(7) Subject to the provisions of this Act, the Board shall regulate its own procedure at an inquiry held under this Part:

Provided that all parties having an interest in the inquiry shall be advised by the Board of the form of the procedure of such inquiry.

51. (1) A person to whom a summons or order is issued under section 50 and to whom such summons or order is served, who —

- (a) refuses or omits, without sufficient cause, to attend at the time and place mentioned in the summons;
 (b) refuses, without sufficient cause, to answer fully and satisfactorily, questions put to him or her by or with the concurrence of the Board; or
 (c) refuses or omits, without sufficient cause, to produce any document in his or her possession or under his or her control,

commits an offence and is liable to a fine not exceeding P1 000, or to imprisonment for a term not exceeding one month, or to both.

(2) A person giving evidence before an inquiry under this Part shall, in respect of evidence given by him or her or documents produced by him or her, be entitled to all the privileges to which he or she would be entitled as a witness before the High Court.

52. (1) The Board may, where it finds a practitioner guilty of any allegation made under section 50 —

- (a) order the Executive Secretary to remove, from the register the name of the practitioner;
 (b) order the suspension of the practitioner for a specified period, from performing the work of the practitioner;
 (c) impose, on the practitioner such conditions as it considers appropriate;
 (d) order the practitioner to pay such fine as the Board may determine;
 (e) order the practitioner to pay any costs or expenses of, and incidental to, the inquiry; or
 (f) caution, in writing, the practitioner and set conditions for the conduct of the practitioner's business, that he or she shall comply with for a period not exceeding three years.

(2) The Board may, after giving reasonable notice in writing to a practitioner, take further action against the practitioner where he or she has not complied with an order under subsection (1) (c), (d), (e) or (f).

(3) An inquiry held under this Part shall be deemed to be a judicial proceeding.

Disregard of
summons, etc.

Powers of
Board at
inquiry

A.88

Disciplinary powers of Board	<p>53. The Board may institute an inquiry, under this Part, into the conduct of a practitioner where —</p> <ul style="list-style-type: none">(a) the practitioner has been convicted of an offence within or outside Botswana, whether before or after the date of registration; and(b) the Board is of the opinion that the offence under paragraph (a) constitutes improper or disgraceful conduct.
Practitioner becoming unfit to practise	<p>54. (1) Where it is alleged that a practitioner has become mentally disabled to such an extent that it would be contrary to the public interest to allow the practitioner to continue to practise, the Board shall —</p> <ul style="list-style-type: none">(a) call for information regarding the allegation;(b) cause such investigation to be made as it thinks necessary; and(c) seek such legal advice or other assistance as it may require. <p>(2) The provisions of sections 50, 51 and 52 shall, with the necessary modifications, apply to a practitioner referred to under subsection (1).</p>
Appeal against decision of Board at inquiry	<p>55. (1) A practitioner aggrieved by a decision of the Board at an inquiry under this Part may, within 30 days of the date of the decision, appeal to the High Court.</p> <p>(2) A person aggrieved by a decision of the Board at an inquiry refusing to remove the name of a practitioner from the register, or to suspend a practitioner may, within 30 days of the date of the decision, appeal to the High Court against such decision.</p> <p>(3) The High Court may, on hearing an appeal in terms of subsection (1) —</p> <ul style="list-style-type: none">(a) confirm, vary or set aside any decision of the Board; or(b) remit the matter to the Board for a further consideration and may make such other orders as to costs as it considers appropriate.
Publication of outcome of proceedings	<p>56. (1) Where the Executive Secretary is directed by the Board, he or she shall cause to be published by notice in the Gazette, the name of a practitioner whose name has been removed or who has been suspended from practice under this Part.</p> <p>(2) A notice published in accordance with subsection (1) shall be <i>prima facie</i> evidence that the name of a practitioner specified in the notice has been removed or the practitioner so specified has been suspended from practice for the period specified in such notice.</p>

PART IX — *Financial Provisions*

Revenues of Board	<p>57. (1) The revenues of the Board shall consist of —</p> <ul style="list-style-type: none">(a) fees that the Board may charge for services it may render;(b) grants and donations that the Board may receive; and(c) income that the Board may receive from rentals or sale of land, building or published materials. <p>(2) The Board shall use the funds acquired under subsection (1) to meet the costs incurred in its operations and shall use any surplus accrued for such purpose as it may determine.</p>
Financial year	<p>58. The financial year of the Board shall be a period of 12 months ending on the 31st of March of every year.</p>
Accounts and audit	<p>59. (1) The Board shall keep and maintain proper books of accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Board, and shall prepare, in each financial year, a statement of such accounts.</p>

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

(3) An auditor appointed under subsection (1) shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on, whether or not —

- (a) the auditor has received all information and explanations 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 Board have been properly kept;
- (c) the Board has complied with all the financial provisions of this Act with which it is the duty of the Board to comply; and
- (d) the statement of accounts prepared by the Board was prepared on a basis consistent with that of the preceding year and represents a true account of the preceding year and represents a true affairs of the Board.

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

60. (1) The Board shall, within a period of six months of the end of the financial year, submit, to the Minister, a comprehensive report on the operations of the Board during that year, together with the auditor's report and the accounts audited under section 59.

Annual report

(2) The Minister shall within 30 days of receiving the report under subsection (1), lay such report before the National Assembly.

PART X – *Miscellaneous*

61. If a person alleges that any provision of this Act has been, is being, or is likely to be contravened in relation to him or her, or any other person or group of persons who have a substantial interest, that person may apply to the High Court for redress.

Enforcement of provisions

62. (1) Any terms of reference, statement, report, decision or any other documents referred to under this Act shall be a public document.

Public documents and register

(2) The competent authority shall maintain a register of public documents referred to under subsection (1), which shall be open for public inspection.

Confidentiality

63. (1) No person appointed, employed or duly authorised by the competent authority or Board, shall disclose any information which the person acquired in the performance of any duty, or the exercise of any function under this Act, except for the purposes of the performance of a duty or the exercise of a function or when lawfully required to do so by a court.

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

A.90

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| Conflict of interest by practitioner | <p>64. (1) A practitioner shall not engage in a consultancy where the engagement in the consultancy may give rise to a conflict of interest.</p> <p>(2) A practitioner shall, where a conflict of interest is likely to arise during the consultancy, disclose such interest to the competent authority.</p> <p>(3) A practitioner who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding three months, or to both.</p> |
| Protection from personal liability | <p>65. An officer, employee or agent of the competent authority shall not be subject to any liability, action, claim or demand, for an act done by the officer, employee or agent, bona fide for the purposes of carrying the provisions of this Act into effect.</p> |
| Powers of entry | <p>66. (1) For the purposes of the administration of this Act, an officer of the competent authority who has been authorised by the Director, in writing, may, without previous notice and at any time —</p> <ul style="list-style-type: none">(a) enter upon any land, premises or vessel for the purposes of undertaking investigations and inspections to ensure compliance with this Act;(b) stop, search and seize any vehicle, vessel, boat or aircraft, which the officer believes to have been used in the commission of an offence or to contain anything which might provide evidence of the offence; or(c) require the driver of the vehicle, the person in charge of the vessel, boat, or the pilot of the aircraft, referred to in paragraph (b), to furnish the officer with details of any licence, permit, authority or permission issued to him or her under this Act. <p>(2) A person authorised to act under subsection (1), if so required, shall produce evidence of the authorisation signed by the Director.</p> <p>(3) Any person who willfully obstructs a person authorised to exercise the powers under this section, or who gives information which he or she knows or ought reasonably to have known is false, commits an offence and is liable to a fine not exceeding P100 000, or to imprisonment for a term not exceeding five years, or to both.</p> <p>(4) Any power conferred by this section shall be construed as including power to search for the purpose of ascertaining the environmental impact of the activity.</p> |
| Powers to require information | <p>67. (1) A person duly authorised under section 66 may, for the purpose of ensuring compliance with this Act, require the owner or occupier of any premises to provide any information which may be required for the purposes of this Act.</p> <p>(2) Any person who —</p> <ul style="list-style-type: none">(a) refuses to give the information required under subsection (1); or(b) gives information which is false or misleading, <p>commits an offence and is liable to a fine not exceeding P100 000, or to imprisonment for a term not exceeding five years, or to both.</p> |
| Trans-boundary environmental impact | <p>68. (1) Where a proposed activity is likely to have a significant adverse environmental impact in another country, the competent authority shall consult the Minister.</p> |

(2) The Minister shall, through the Minister responsible for foreign affairs, inform the country concerned about the intended activity, by sending to that country's Minister responsible for foreign affairs, the terms of reference or a statement, and any other relevant information.

(3) This section applies to any country —

- (a) in respect of which the Minister, having regard to any reciprocal provisions under the laws of that country, so directs; or
- (b) that is a party to an international agreement or treaty to which Botswana is a party, where the parties to the international agreement or treaty are obliged to so inform one another.

69. Every person whose name has been entered in the register as a practitioner shall, as long as his or her name remains on the register, be entitled to adopt and use the word and title "Practitioner" or "Registered Practitioner" or such other style or title as may be approved by the Board, and to offer his or her services to the public for gain or reward based on fee scales provided in the conditions of engagement and such accepted fees as may be prescribed by the Board.

Effect of registration

70. (1) Any person who is not a practitioner who —

- (a) performs the work of a practitioner for gain;
- (b) practises or carries on business under any name or style which contains the word "Practitioner";
- (c) uses by way of advertisement, description, document, drawing or other means, any name, title, addition, description, letters, motto, emblem, symbol, badge, seal or other insignia which indicates or is calculated to lead persons to assume that he or she is a practitioner; or
- (d) pretends or by any means whatsoever, holds himself or herself out to be a practitioner, commits an offence.

Offence and penalty

(2) A practitioner who knowingly employs or engages in the capacity of a practitioner any person who was registered and —

- (a) whose name has been removed from the register and has not been restored; or
- (b) who has been suspended from practice in terms of this Act, during the period of suspension, save with the prior written consent of the Board, which consent may be given for such period and subject to such conditions as the Board may determine, commits an offence.

(3) A person convicted of an offence under subsection (1) or (2) is liable on a first conviction to a fine not exceeding P50 000, or to imprisonment for a term not exceeding two years, or to both.

(4) For the purposes of subsection (1), a person shall be deemed to be performing the work of a practitioner for gain if he or she or a partnership of which he or she is a member or an employee including a director in relation to a company —

- (a) performs the work of a practitioner for or in expectation of a fee, gain or reward, direct or indirect to himself or herself or to any other person; or
- (b) holds himself or herself out as prepared in expectation of a fee, gain or reward, direct or indirect to himself or herself or to any other person, to perform the work of a practitioner.

A.92

Exemptions

71. (1) Without prejudice to the generality of section 70, it shall be lawful for —

- (a) a person who is —
 - (i) in the bona fide employment of a practitioner, to perform the work of a practitioner under the direction and control of such practitioner, or
 - (ii) engaged by a practitioner to provide a specific service for such practitioner, to perform, in accordance with the instructions of such practitioner, the work of a practitioner, other than the supervision of such work;
- (b) a body corporate, firm or partnership which carries on business which involves the performance of the work of a practitioner, to perform the work of a practitioner or to describe or hold itself out to be a practitioner where —
 - (i) the business of the body corporate, firm or partnership, in so far as it relates to the works of a practitioner, is under the direct control and management of a principal who is a practitioner and who does not act at the same time in a similar capacity for any other body corporate, firm or partnership, or
 - (ii) the business referred to in subparagraph (i) is carried on and is not personally conducted by the said principal, such business is being conducted under the direction of the said principal by an assistant who is a practitioner; or
- (c) a person in the bona fide employment of a body corporate, firm or partnership referred to under paragraph (b) to perform the work of a practitioner under the direction and control of a principal or assistant referred to under paragraph (b).

(2) It shall be a defence to any charge of contravening subsection (1)(a) for a person to show that he or she performed the work of a practitioner for his or her employer whilst in the bona fide full time employment of his or her employer and that —

- (a) his or her remuneration was by way of a wage or salary and not a fee or commission; and
- (b) he or she was not employed solely to design or supervise the work of constructing a particular building or buildings or additions thereto.

General penalty

72. Any person who contravenes the provisions of this Act for which no penalty is otherwise provided and is convicted of an offence shall be liable to a fine not exceeding P50 000, or to a term of imprisonment not exceeding two years, or to both.

Regulations

73. The Minister may make regulations for any matter which under this Act is to be prescribed or for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, such regulations may make provision for —

- (a) guidelines governing environmental impact assessment issues;
- (b) a list of activities, locations and thresholds or environmentally sensitive areas for which a statement is mandatory;

- (c) qualifications to conduct an environmental impact assessment;
- (d) content of project brief, environmental impact statement, strategic environmental assessment report, environmental management plan, terms of reference or any other report or document to be submitted to the competent authority;
- (e) reviewing of the terms of reference, the statement, the monitoring programme and the evaluation report;
- (f) the manner of holding public hearings;
- (g) revoking or modifying an authorisation issued under this Act;
- (h) the manner in which entry into premises may be achieved to investigate or evaluate an environmental impact, or to monitor and audit the environmental impact of an activity;
- (i) the code of conduct of practitioners registered under this Act;
- (j) fees charged by the practitioners for the provision of services;
- (k) fees charged by the competent authority for the provision of services;
- (l) forms to be used under the Act; and
- (m) criteria for registration and certification.

74. The Environmental Impact Assessment Act (hereinafter referred to as “the repealed Act”), is hereby repealed.

Repeal of
Cap. 65:07

75. Notwithstanding the repeal effected under section 74 any —

Transitional
provisions

- (a) application or process commenced; or
- (b) determination, order or other ruling made,
under the repealed Act, immediately before the coming into operation of this Act shall be dealt with in accordance with the provisions of the repealed Act.

76. (1) This Act binds the State.

Act to bind
State

(2) Subject to the provisions of this section the provisions of this Act, shall not apply to activities implemented by the Botswana Defence Force established under the Botswana Defence Force Act, Directorate of Intelligence and Security established under the Intelligence and Security Service Act, Botswana Police Service established under the Botswana Police Act and the Prison Service estalished under the Prisons Act or any other security organ of the state where national security may be compromised.

21:05

(3) The Minister may establish a special committee to be known as the Environmental Impact Special Committee to determine the environmental impact of the activities under subsection (2).

23:02

(4) The committee established under subsection (3) shall —

21:02

- (a) be composed of such members of the committee as the Minister may determine;
- (b) operate under such conditions as the Minister may determine; and
- (c) in determining the environmental impact of an activity, apply such procedure as the Minister may, in writing, establish.

21:03

A.94

(5) The Environmental Impact Special Committee shall, in consultation with any of the security organs referred to under subsection (2), assess the activity implemented by such security organ and determine whether the provisions of this section or other provisions of this Act apply to such activity.

(6) The reports produced under this section shall, unless the Minister in consultation with the relevant security organ otherwise determines, be confidential.

PASSED by the National Assembly this 12th day of April, 2011.

B. N. DITHAPO,
Clerk of the National Assembly.