

CHAPTER 39:02
CONSULAR CONVENTIONS
ARRANGEMENT OF SECTIONS

SECTION

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Proc. 68, 1950,
Cap. 41, 1959,
HMC Order 1, 1963,
L.N. 84, 1966,
Act 42, 1971.

An Act to confer upon the consular officers of foreign states with which consular conventions are concluded by Botswana, certain powers relating to the administration of the estates and property of deceased persons: and to restrict the powers of members of the Botswana Police Force and other persons to enter the consular offices of such states.

[Date of Commencement: 8th December, 1950]

1. Short title

This Act may be cited as the Consular Conventions Act.

2. Powers of consular officers in relation to property in Botswana of deceased persons

(1) Where any person who is a national of a state to which this Act applies is named as executor in the will of a deceased person disposing of property in Botswana, or is otherwise a person to whom a grant of representation to the estate in Botswana of a deceased person may be made, then if the Master of the High Court is satisfied, on the application of a consular officer of the said state, that the said national is not resident in Botswana, and if no application for a grant of such representation is made by a person duly authorized by power of attorney to act for him in that behalf, the Master of the High Court shall make to that officer any such grant of representation to the estate of the deceased as would be made to him if he were so authorized as aforesaid:

Provided that the Master of the High Court may, if he thinks fit, postpone the making of a grant by virtue of this section during such period as the Master of the High Court considers appropriate having regard to the circumstances of the case.

(2) Where any person who is a national of a state to which this Act applies-

- (a) is entitled to payment or delivery of any money or property in respect of any interest in the estate of a deceased person, or vesting in possession on the death of any person, or is entitled to payment of any money becoming due on the death of any person; or
- (b) is a person to whom any money or property comprised in the estate of a deceased person may be paid or delivered in pursuance of any enactment, rule or regulation, whether passed or made before or after the commencement of this Act, authorizing the payment or delivery of such money or property without representation to the estate of the deceased being granted,

then if the said national is not resident in Botswana, a consular officer of that state shall have the like right and power to receive and give a valid discharge for any such money or property in Botswana as if he were duly authorized by power of attorney to act for him in that behalf:

Provided that no person shall be authorized or required by this subsection to pay or deliver any money or property to a consular officer if it is within his knowledge that any other person in Botswana has been expressly authorized to receive that money or property on behalf of the said national.

(3) A grant of administration made by virtue of this section may be made to the consular officer by his official title, and to his successors in office; and where a grant is so made, the office of administrator, and all the estate rights, duties and liabilities of the administrator (including liabilities under the administration bond) shall be vested in and imposed on the person for the time being holding the office, and no fresh grant shall be required by reason only of the death or vacation of office of the person to whom the grant was made or in whom it is vested as aforesaid:

Provided that nothing in this subsection shall affect any limitation contained in the grant, or any power of the Master of the High Court to revoke the grant.

(4) Notwithstanding anything in any other law for the time being in force, sureties shall not be required to an administration bond given by a consular officer upon the grant of administration by virtue of this section.

3. Supplementary provisions as to section 2

Notwithstanding any rule of law conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of powers conferred on him by or under section 2 or in respect of any document for the time being in his possession relating thereto.

4. Restriction of powers of entry in relation to consular offices

(1) Subject to the provisions of this section, a consular office of a state to which this Act applies shall not be entered by any member of the Botswana Police Force or other person acting in the execution of any warrant or other legal process or in the exercise of powers conferred by or under any enactment (whether passed before or after the commencement of this Act) or otherwise, except with the consent of the consular officer in charge of that office, or if that consent is withheld or cannot be obtained, with the consent of the President:

Provided that the foregoing provisions of this subsection shall not apply in relation to any entry effected-

- (a) in pursuance of any law which confers power on any person to enter premises for the purpose of extinguishing fire;
- (b) by any member of the Botswana Police Force having reasonable cause to believe that a crime involving violence has been or is being or is about to be committed in the consular office;
- (c) by any person entitled to enter by virtue of any servitude, contract or other private right.

(2) This section shall not apply to any consular office which for the time being is in the charge of a consular officer who is not a national of the state by which that office is maintained.

(3) For the purposes of this section, the expression "consular office" means any building or part of a building which is exclusively occupied for the purposes of the official business of a consular officer.

5. Application of Act

The President may by order published in the *Gazette* direct that any section of this Act shall apply to any foreign State specified in the order being a state with which a consular convention providing for matter for which provision is made herein has been concluded by Botswana.