

CHAPTER 57:04
TERTIARY EDUCATION
ARRANGEMENT OF SECTIONS

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Act 4, 1999.

An Act to provide for the establishment of the Tertiary Education Council, to provide for its powers, duties and functions and for matters incidental thereto.

[Date of Commencement: 30th April, 1999]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Tertiary Education Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"accreditation" means recognition of a tertiary institution in accordance with section 28;

"Certificate of registration" means a certificate issued in terms of section 22;

"Council" means the Tertiary Education Council established under section 3;

"Executive Secretary" means the Executive Secretary of the Council appointed under section 9;

"member" means a member of the Tertiary Education Council;

"tertiary institution" means a post secondary training institution including a university;

"letter of interim authority" means a letter authorising the operation of a tertiary institution issued in terms of section 19.

PART II

Establishment of the Tertiary Education Council (ss 3-15)

3. Establishment of Council

(1) There is hereby established the Tertiary Education Council.

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

4. Membership of Council

(1) The Council shall consist of the following members-

- (a) the Chairperson;
- (b) the Permanent Secretary to the Ministry responsible for education;
- (c) two public officers at Permanent Secretary level;
- (d) two persons of recognised standing in business from statutory corporations or the private sector;
- (e) one person from the community;
- (f) at least one Vice Chancellor from either a public or private university;
- (g) the Chief Executive of Botswana Training Authority;
- (h) a representative of tertiary institutions;

- (i) a representative of the academic community;
- (j) a student of a tertiary institution; and
- (k) two persons co-opted by the Council.

(2) The Chairperson of the Council shall be appointed by the President and the other members of the Council shall be appointed by the Minister.

(3) The members to be appointed under subsection 1(k) shall be co-opted by the members appointed under paragraphs (a) to (j) of subsection (1) at an initial meeting convened for such purpose by the Chairperson.

(4) The Vice-Chairperson shall be elected by the members from among their number.

(5) The appointments to the Council shall be published by notice in the *Gazette*.

5. Powers and functions of Council

(1) The Council shall be responsible for the promotion and coordination of tertiary education and for the determination and maintenance of standards of teaching, examination and research in tertiary institutions.

(2) Without prejudice to the generality of subsection (1), the Council shall-

- (a) formulate policy on tertiary education and advise Government accordingly;
- (b) co-ordinate the long term planning and overall development of tertiary education;
- (c) liaise with both public and private sectors of the economy on all matters relating to human resources development and requirements;
- (d) plan for the funding of tertiary education and research, including the recurrent and development needs of public tertiary institutions;
- (e) receive and review budgets for public tertiary institutions and make recommendations to Government;
- (f) promote coordination among tertiary institutions;
- (g) advise Government on the establishment of public tertiary institutions;
- (h) receive and approve applications from persons seeking to establish private tertiary institutions;
- (i) review and approve programmes of study in respect of private tertiary institution;
- (j) accredit private tertiary institutions;
- (k) ensure that quality assurance procedures are in place in all tertiary institutions;
- (l) ensure the audit of physical facilities and the assessment of their adequacy in tertiary institutions; and
- (m) advise on any other matter related to tertiary education.

6. Seal of Council

(1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Executive Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson and Vice-Chairperson or any other person authorised in that behalf by a resolution of the Council.

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

7. Tenure of office of Council

(1) A member other than the Chairperson shall hold office for a period not exceeding three years as may be specified in the notice appointing them and at the end thereof, a member shall be eligible for reappointment.

(2) The Chairperson shall hold office for a period not exceeding five years and at the end thereof the Chairperson shall be eligible for reappointment.

8. Disqualification, removal and resignation

(1) A person shall not be appointed as a member or be qualified to continue to hold office who 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, arrangement or composition with his creditors, which has not been rescinded or set aside;
- (b) within the period of ten years immediately preceding the date of his appointment, been convicted-
 - (i) of a criminal offence within Botswana; or
 - (ii) of any criminal offence for which he has not received a free pardon and notwithstanding that the sentence has been suspended, which, if committed within Botswana, would have resulted in a criminal offence having been committed, the penalty for which would be at least six months imprisonment without the option of a fine.
- (2) The Minister may remove a member if the member-
 - (a) is absent without reasonable cause from three consecutive meetings of the Council of which he has had notice;
 - (b) is inefficient;
 - (c) has been found to be physically or mentally incapable of performing his duties efficiently, and the member's medical doctor has issued a certificate to that effect;
 - (d) contravenes the provisions of this Act or otherwise misconducts himself to the detriment of the objectives of the Council; or
 - (e) has failed to comply with the provisions of section 11.
- (3) A member may resign from office by giving 30 days notice in writing to the Minister.
- (4) 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 charges levelled against the member under subsection 1(b);
 - (b) a period of 30 days has elapsed from the date the member gave a notice in writing to the Minister in accordance with subsection (3), of the member's intention to resign;
 - (c) a period of 30 days has elapsed from the date the member is given a notice in writing by the Minister to vacate office; or
 - (d) a member is summarily dismissed by the Minister on the grounds of contravening the provisions of this Act or for misconduct in accordance with subsection (2)(d).

9. Executive Secretary

(1) The Council shall appoint an Executive Secretary on such terms as the Council may determine.

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

(3) The Executive Secretary shall, subject to such directions on matters of policy as may be given by the Council, be the chief executive officer of the Council and shall-

- (a) develop resource allocation and utilisation models and co-ordinate the preparation of the annual budgets of public tertiary institutions;
- (b) co-ordinate the planning and provision of physical facilities for public tertiary institutions;
- (c) liaise with Government and tertiary institutions;
- (d) establish a documentation and information centre on tertiary education and carry out relevant research;
- (e) review the needs of the labour market in consultation with the National Manpower, Employment and Incomes Council established under the revised income policy of 1992, the Ministry responsible for finance and development planning and such other persons or institutions as the Minister may direct;
- (f) develop performance indicators and compile statistics on tertiary education institutions to provide information for planning, development and research in tertiary education;

and

- (g) prepare annual reports on the activities of the council.

(4) The Executive Secretary shall, with the approval of the Council, employ staff necessary for the proper discharge of the functions of the Council, on such terms and conditions as may be determined by the Council.

10. Filling of casual vacancy

Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister may appoint another person to be a member in place of the member who vacates office.

11. Disclosure of interest

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

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

12. Proceedings of the Council

(1) Subject to the provisions of this Act, the Council may regulate its own proceedings.

(2) The Council shall meet for the transaction of business, at least three times in a year.

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

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

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

(5) There shall preside at any meeting of the Council-

- (a) the Chairperson;
- (b) in the absence of the Chairperson, the Vice-Chairperson;
- (c) in the absence of the Chairperson and Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Council on any question shall be by the 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 deliberate vote.

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

13. Statutes

Subject to the approval of the Minister, the Council may from time to time, enact statutes for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of the foregoing may make provision for-

- (a) regulating the appointment, conditions of service, termination of appointment and retirement benefits of the staff of the Council;
- (b) determining the persons authorised to sign contracts, cheques and other documents on behalf of the Council, and otherwise regulating procedure in relation to transactions entered into by the Council; and
- (c) securing that the seal of the Council is kept in proper custody and is used only by authority of the Council.

14. Committees of the Council

(1) The Council shall appoint Committees consisting of its members or of other suitably

qualified persons, and in particular may appoint the following Committees-

- (a) the Financial Planning and Budget Committee which shall-
 - (i) receive and review budgets from tertiary institutions;
 - (ii) make plans for the funding of public tertiary education and research including the recurrent and development needs of tertiary institutions; and
 - (iii) make plans for the funding of private tertiary institutions in circumstances where the Board decides, with the approval of the Minister, that it is necessary to alleviate a specific short term financial difficulty that may affect the well-being of students;
- (b) the Advisory Committee which shall-
 - (i) promote coordination among tertiary institutions; and
 - (ii) deal with any matter relating to tertiary education;
- (c) the Academic Planning and Development Committee which shall-
 - (i) advise on the long term plans and overall development of tertiary education;
 - (ii) receive and appraise applications from organisations seeking to establish private tertiary institutions;
 - (iii) arrange for the review and approval of programmes of study and make recommendations in respect of private tertiary institutions;
 - (iv) advise on the accreditation of tertiary institutions; and
 - (v) ensure that quality assurance procedures are in place in all tertiary institutions; and
- (d) the Inspection Committee with power to make-
 - (i) an inquiry into and for the purpose of ascertaining the correctness of the particulars submitted under section 25(2);
 - (ii) an inquiry into the general academic, administrative and student welfare of a tertiary institution; and
 - (iii) such other investigations of relevance to the application as the Council may deem necessary.

(2) The Council may from time to time appoint such other Committees either of a general or special nature consisting of such number of members as the Council may think fit.

(3) The Council may delegate any of its powers, functions or duties under this Act to a Committee appointed under subsection (2).

15. Remuneration and allowances

A member shall be paid out of the funds of the Council such remuneration and allowances, if any, as the Minister may from time to time determine.

PART III

Establishment of Tertiary Institutions (ss 16-20)

16. Application for establishment of private institutions

(1) No person shall establish a private tertiary institution except in accordance with the provisions of this Act.

(2) A person wishing to establish a private tertiary institution shall apply to the Council for approval of establishment by submitting to the Executive Secretary, an application in such manner as may be prescribed and accompanied by such details and such documentation as may be prescribed.

17. Establishment of public institutions

Public tertiary institutions established after the commencement of this Act, shall be established as the Minister may, in the Regulations, prescribe.

18. Inspection and verification of resources

(1) The Council shall inspect and verify the suitability of an application made under section 16 as the Minister may prescribe.

(2) All costs associated with the verification and evaluation of resources under subsection (1) shall be borne by the applicant.

19. Interim authority

(1) Where the Council is satisfied that-

- (a) the resources required, as may be prescribed, are available or are likely to be available;
- (b) the applicant is following realistic plans to achieve the aims and objects for which the tertiary institution is to be established;
- (c) the tertiary institution when established is likely to attain and maintain standards set out in Part V on a long term basis; and
- (d) the establishment of the tertiary institution is in the interest of tertiary education in Botswana,

it may accept the proposal and issue a letter under seal constituting an interim authority to operate in the manner specified in sub section (2) until such time as it is suspended, revoked or it is registered in accordance with section 21.

(2) A letter constituting interim authority shall authorise the person or institution named therein to make preparation towards the implementation of the proposal accepted under sub section (1) and in particular to-

- (a) set up a governing body for the tertiary institution intended to be established;
- (b) commence or continue the development of physical facilities;
- (c) commence or continue assembly of academic resources;
- (d) advertise the programmes of instruction expected to be conducted at that tertiary institution; and
- (e) admit students to such programmes as the Council may specify.

(3) The name and particulars of every tertiary institution in respect of which a letter of interim authority is issued under this section shall be published by notice in the *Gazette*.

20. Refusal, suspension or revocation of authority

(1) The Council may refuse a letter of interim authority if it is satisfied that the person who or institution that has applied for it is unlikely to procure the academic, physical and other resources necessary for the establishment of a viable tertiary institution.

(2) The Council may by notice published in the *Gazette* suspend or revoke a letter of interim authority if-

- (a) the person or institution named therein has not within two years of issue made substantial progress in respect of the matters set out in section 19(2) or notified the Council of his or its intention not to proceed with the establishment of a tertiary institution, or is, in any event, patently incapable of complying with the standards set out in Part V of this Act; or
- (b) in the opinion of the Council such fundamental changes have since occurred that had such changes been in existence at the time of its deliberations under section 19(1) the letter would not have been issued.

(3) The Council shall, in all cases of suspension, indicate the steps which the holder of that letter must take before interim authority can be restored.

(4) Where a letter of interim authority is refused or revoked in accordance with this section, the Council shall not entertain any subsequent application by the same or substantially similar proposal within two years of that refusal or revocation unless good cause is shown by the applicant.

PART IV

Registration of Existing Tertiary Institutions (ss 21-22)

21. Registration procedure

(1) Every tertiary institution which is in operation, shall within six months of the commencement of this Act or within such extended period as the Council may permit, apply to the Executive Secretary for registration.

(2) Every tertiary institution that is operating under a letter of interim authority and that

has procured to the satisfaction of the Council the academic, physical and other resources necessary for the establishment of a viable tertiary institution shall apply to the Executive Secretary for registration.

(3) An application for registration in accordance with subsections (1) and (2) shall be as the Minister may, in the Regulations, prescribe.

22. Effect of registration

(1) The Council shall prepare and publish by notice in the *Gazette* a register of all tertiary institutions to which section 21 applies and in respect of which details have been received, and shall in that publication, indicate in respect of each such tertiary institution whether all particulars set out in the application under section 21 have been supplied.

(2) Any tertiary institution which does not appear in the register prepared under subsection (1) or whose particulars are incomplete, shall, from the date of publication of that register, cease to operate, or to perform functions consistent with those of a tertiary institution.

(3) Notwithstanding the provisions of subsection (2), the Council may, where good cause is shown by the applicant, permit a tertiary institution whose particulars are incomplete, to operate for a further period of three months whereupon the tertiary institution shall, unless all particulars are supplied, cease to operate.

(4) Each tertiary institution appearing in the register whose particulars are complete shall be issued with a certificate of registration bearing the seal of the Council and such certificate shall constitute authority to continue operations until such times as it is suspended or revoked.

(5) The Council may suspend or revoke the registration of tertiary institutions.

(6) It shall be an offence for any person to administer or otherwise perform any function in furtherance of the aims and objects of a tertiary institution whose operations have ceased in terms of subsections (2)(3) and (5).

(7) A person convicted of an offence under subsection (6) shall be liable to a fine not exceeding P5000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

PART V

Institutional Standards (ss 23-24)

23. Preparation of standards

(1) The Minister may, on the recommendation of the Council, prescribe in the Regulations the institutional standards to govern the performance, operations and general conduct of all tertiary institutions authorised to operate under this Act.

(2) The Council may, at the request of each tertiary institution, indicate in writing the specific steps to be taken towards the attainment of the standards referred to in subsection (1).

24. Evaluation of performance and supervision

(1) A tertiary institution authorised to operate under this Act shall as long as such authority is in force, prepare and submit to the Council-

- (a) an annual report of its activities in each year of operation before or by the end of December each year; and
- (b) a detailed assessment at such interval as the Council may determine, of the steps it has taken towards the achievement of the aims and objects for which it was established.

(2) The Council shall discuss all reports submitted pursuant to subsection (1) and may make such comments or give such other instructions thereon for action by the tertiary institution concerned.

(3) Where a tertiary institution fails, without sufficient cause, to comply with the requirements of subsection (1), the Council may suspend or revoke registration of the tertiary institution in accordance with section 22(5).

PART VI

Accreditation of Private Tertiary Institutions (ss 25-29)

25. Criteria for accreditation

(1) Any private tertiary institution being the holder of a certificate of registration issued in accordance with this Act, may apply to the Council for accreditation provided that-

- (a) the certificate-
 - (i) has been held for at least three years or for such other period as the Council may in a particular case determine; and
 - (ii) has not been suspended or revoked; and
- (b) the most recent assessment of the tertiary institution in accordance with section 24(1)(b) indicate that the Council is satisfied with the progress so far made in the design, implementation or maintenance of an academic and administrative system acceptable in terms of the institutional standards prescribed under this Act and relevant to the needs of tertiary education in Botswana.

(2) An application for accreditation shall, in addition to any other details as the Council may specify, be accompanied by-

- (a) a list of the academic qualifications for all members of staff employed by the tertiary institution during the period assessed under section 24(b) and those expected to be employed by the tertiary institution;
- (b) a list of the total number of students that have been enrolled in each programme of instruction offered at the tertiary institution and the standards attained by those that have graduated during the period assessed;
- (c) a statement of the size and quality of the library and equipment which have been developed for each programme and for programmes to be offered at the tertiary institution;
- (d) a statement of the financial resources that are available for the exclusive use of the tertiary institution, certified by the auditors of the tertiary institution; and
- (e) an inventory of the physical facilities including land that are available for the exclusive use of the tertiary institution.

26. Inspection committee

(1) The Council shall, before considering an application submitted in accordance with section 25, appoint an inspection committee in accordance with section 14.

(2) The inspection committee shall submit a factual and evaluative report to the Council within six months of the date of its appointment.

27. Deliberations of the Council

(1) As soon as the report of the inspection committee is received, the Council shall consider all documentation relevant to the application and shall indicate what revisions or amendments, if any, the tertiary institution concerned should be required to make before the merits thereof are assessed.

(2) Where after a full deliberation on the merits of each application the Council is satisfied that-

- (a) the information submitted in accordance with section 25(2) forms a sound basis for the academic and administrative organisation of the tertiary institution; and
- (b) the tertiary institution has effectively organized adequate human, physical, financial and other resources into an educational programme comparable to that of similar institutions authorised to operate in Botswana,

it shall recommend to the Minister that the tertiary institution be accredited.

(3) Where the Council is not satisfied in the manner specified in sub section (2), it shall refuse to recommend accreditation.

(4) Should an application for accreditation be refused, the Council shall not accept or entertain more than one re-application for such accreditation within a period of two years as from the date of the first application.

28. Effect of accreditation

(1) In addition to the status conferred by reason of publication under section 22 of the Act, the qualifications awarded in respect of programmes of instruction offered in or by a tertiary institution to which accreditation has been granted under this Act shall be recognised as comparable and of equivalent merit to similar qualifications awarded in respect of programmes offered in and by a public tertiary institution in Botswana.

(2) The provisions of subsection (1) shall extend and apply to qualifications conferred by any tertiary institution that has not yet qualified for assessment under section 24(1)(b).

(3) The Council shall, in respect of qualifications not included under subsections (1) and (2) establish a committee in accordance with section 14 to advise on whether the same should be recognised in terms of this section.

(4) Where after a full deliberation on the merits of each case transmitted to it under subsection (3), the Council is satisfied that the qualifications in issue ought to be recognised, it shall publish a notice in the *Gazette* to that effect.

29. Obligations of accredited institutions

Every accredited tertiary institution shall-

- (a) ensure that-
 - (i) the institutional standards prescribed under Part V are at all times maintained; and
 - (ii) all lawful instructions issued by the Council or any other authority empowered to do so under this Act are complied with; and
- (b) submit to such other modes of supervision including inspection and visitation and at such intervals as may be determined by the Council.

PART VII

Financial Provisions (ss 30-33)

30. Funds of the Council

(1) The funds of the Council shall consist of-

- (a) moneys appropriated by the National Assembly for the purposes of the Council;
- (b) grants and donations that the Council may receive; and
- (c) income that the Council may receive from investments, rentals, sale of land, building or educational materials.

(2) The Council shall use the funds acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus accrued for such purposes as it may determine, with the approval of the Minister.

31. Financial year

The financial year of the Council shall be a period of twelve months ending on the 31st of March.

32. Accounts and audit

(1) The Council shall keep and maintain proper accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Council, and shall prepare, in each financial year, a statement of such accounts.

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

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

- (a) the auditor has received all the information and explanation which, to the best of the auditors knowledge and belief, were necessary for the performance of the auditors duties;
- (b) the accounts and related records of the Council have been properly kept;
- (c) the Council has complied with all the financial provisions of this Act with which it is the duty of the Council to comply; and
- (d) the statement of accounts prepared by the Council was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions

and financial affairs of the Council.

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

33. Annual report

(1) The Council shall within a period of six months after the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on the operations of the Council during that year, together with the auditors report and the audited accounts as provided for in section 32 and the Council shall cause such report to be published in such manner as the Minister may require.

(2) A report compiled in accordance with subsection (1) shall be laid in Parliament by the Minister, within three months of receipt thereof.

PART VIII **General (ss 34-38)**

34. Indemnity

No matter or thing done or omitted by a member of the Council or a member of staff of the Council shall, if the matter or thing is done *bona fide* in the course of the operations of the Council, render a member or staff of the Council personally liable to an action, claim or demand.

35. Offences and penalties

A person who contravenes a provision of this Act for which no penalty is provided, commits an offence and on conviction shall be liable to a fine not exceeding P5000 or to imprisonment for a term not exceeding five years.

36. Transitional provisions

The Minister shall by notice published in the *Gazette*, make such transitional arrangements not otherwise provided for in this Act, as shall be necessary for the establishment of the Council.

37. Power of Minister to give directions

(1) The Minister may, after consultation with the Council give to the Council such written directions not inconsistent with the provisions of this Act as the Minister shall determine with regard to the exercise by the Council of any of its powers and functions under this Act, and the Council shall give effect to such direction.

(2) The Council shall furnish the Minister with information in respect of any matter relating to property that the Council may engage in.

38. Regulations

(1) The Minister, in consultation with the Council, may make regulations prescribing anything which under this Act is to be prescribed or which, in the opinion of the Council, 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.

(2) Without prejudice to the generality of subsection (1), regulations may-

- (a) specify institutions or class of institutions which may be recognised as tertiary institutions by the Council;
- (b) define the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of a tertiary institution, having regard to the branch of education in which he is expected to give instruction;
- (c) define the minimum standards of instruction for the grant of any qualification by any tertiary institution;
- (d) regulate the maintenance of standards and the coordination of work or facilities in tertiary institutions;
- (e) specify matters in respect of which fees may be charged and scales of fees in accordance with which fees may be charged by a public tertiary institution;
- (f) specify the manner in which an inquiry may be conducted on a tertiary institution; and
- (g) specify the manner of registration of tertiary institutions and the maintenance of the

register.