

Bill No. _____ of 2020

NATIONAL ARTS COUNCIL OF BOTSWANA BILL, 2020
(Published on _____, 2020)

MEMORANDUM

1. A draft of the above Bill, which is intended to be presented to the National Assembly, is set out below.
2. The object of the Bill is to establish the National Arts Council of Botswana to promote and develop the arts and culture.
3. Part II of the Bill provides for the establishment, duties and annual general meetings of the Council and also provides for the establishment and duties of the Board.
4. Part III of the Bill deals with meetings and proceedings of the Board. The Board has the power to retain specialist advisers and form committees. Any conflict of interest must be notified to the Board in order to enhance the transparency of the Board.
5. Part IV of the Bill deals with the appointment and duties of the Chief Executive Officer as well as the senior officers and other staff.
6. Part V of the Bill deals with financial provisions relating to the funds, accounts, audit and the annual reports of the Council. The Board shall provide the Minister with an annual plan and accounts of the Council. Matters relating to registration with the Council; renewal and revocation of registration, are at Part VI of the Bill.
7. Part VII provides for regulations to be made by the Minister.

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T. Rakgare
Minister for Youth Empowerment, Sport and
Culture Development

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**A BILL
-entitled-**

An Act to provide for the establishment of the National Arts Council of Botswana; to provide for the powers, duties and functions of the Council; and for matters connected or incidental thereto.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

PART I - Preliminary

*Short title and
commencement*

1. This Act may be cited as the National Arts Council of Botswana Act, 2020, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

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

“arts and culture ” includes all forms and traditions of literary arts, performing arts, visual arts, media arts and culinary arts;

“Chairperson” means the Chairperson of the Board;

“company” has the meaning assigned to it under the Companies Act;

Cap. 42:01

“Council” means the National Arts Council of Botswana established under section 3;

“Board” means the Board of the National Arts Council of Botswana established under section 5;

“Chief Executive Officer” means a person appointed as such under section 19;

“member” means a member of the Board; and

Cap. 18:01

“society” has the meaning assigned to it under the Societies Act.

Part II - Establishment of Council and Board

Establishment of Council

3. (1) There is hereby established a Council to be known as the National Arts Council of Botswana.

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

Objectives and functions of Council

4. The objectives and functions of the Council shall be to –

- (a) register arts and culture societies and companies;
- (b) facilitate training and skills development in the arts and culture sector;
- (c) facilitate resource mobilisation, distribution and investment in the arts and culture;
- (d) facilitate programme development and implementation to promote local arts and culture;
- (e) promote good corporate governance in the arts and culture sector;
- (f) facilitate cultural exchanges between Botswana and other countries;
- (g) advise Government on matters relating to the arts and culture; and

- (h) regulate the arts and culture sector and the creative industry.

Establishment of Board

5. There is hereby established a Board of the Council which shall consist of 11 members.

Membership of Board

6. (1) The members of the Board shall be –

- (i) the Chairperson;
- (j) a representative of the ministry responsible for the arts and culture;
- (k) a representative of the ministry responsible for copyright and intellectual property;
- (l) a representative of the ministry responsible for media and broadcasting services;
- (m) a representative of the ministry responsible for registration of societies; and
- (n) six members from the public and private sector who have the skill, experience and competences relevant to the creative industry.

(2) The Chief Executive Officer shall be an *ex-officio* member of the Board but shall not have any voting rights.

(3) A Vice Chairperson of the Board shall be elected by the members from amongst their number.

(4) The Minister shall, by Notice published in the *Gazette*, publish the name of each member and the duration of his or her term of appointment.

Direction by Minister

7.(1) The Minister may give the Board written directions, of a general or specific nature, regarding the exercise of its powers, which directions shall not be inconsistent with this Act or with the contractual or other legal obligations of the Board.

(2) The Board shall give effect to the Minister's directions given in accordance with subsection (1).

Tenure of office of members

8. Subject to the provisions of section 10, each member shall hold office for a period of three years and shall be eligible for re-appointment for one further term on the expiry of his or her term of office.

Disqualification and removal from Board membership

9. No person shall be appointed as a member, nor shall any person be qualified to hold office as a member who -

- (a) has, in terms of any law in force in any country -
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged,
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;
- (b) has, within a period of 10 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 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;
- (c) is a member of the National Assembly, any District, Town or City Council;
- (d) is the holder of any office in any political party or organisation of a political nature in Botswana;
- (e) is a serving member of the judiciary within Botswana;

- (f) is not a citizen of Botswana;
- (g) is an employee of the Council; or
- (h) has been required to resign his or her position in accordance with section 10.

Vacation of office

10. (1) A member shall vacate his or her office and such member's office shall become vacant -

- (a) if he or she becomes disqualified in terms of section 9 to hold office as a member;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) if he or she is absent from three consecutive meetings of the Board, without the permission of the Chairperson or is present at less than half of the Board meetings in any one calendar year;
- (d) upon his or her death;
- (e) upon the expiry of one months' notice given in writing to the Chairperson, of his or her intention to resign from office;
- (f) if he or she becomes mentally or physically incapable of performing his or her duties as a member provided that if there arises any doubt as to whether he or she is physically or mentally incapable, he or she shall either submit himself or herself, or at the request of the members, shall submit to a medical examination by two registered medical practitioners who are not personally known to him or her;
- (g) if he or she acts in anyway so as to bring the name of the Council into disrepute;
- (h) if his or her term of office comes to an end, and, being eligible for re-appointment for a further term of office, he or she is not re-appointed for such further term of office;
- (i) if he or she fails to disclose any material fact that would have disqualified him or her from

appointment as a member;

- (j) if he or she ceases to be a citizen of Botswana; or
- (k) if he or she is found guilty of professional misconduct by a committee, the Board or any other body constituted for the purpose of adjudicating on matters of discipline or conduct.

(2) Except where subsections (1)(d), (e) or (h) apply, the member shall be entitled to receive written reasons why he or she is required to vacate his or her office from the Chairperson, or, in the event that it is the Chairperson who is required to resign his or her office, the Minister, and such written reasons shall be communicated to him or her within 30 days of the date that the member is required to resign his or her office.

(3) In the event that a member who is given written reasons under subsection (2) is aggrieved by the decision, he or she may appeal to the Minister, within a period of 14 days, who shall cause a full investigation on the matter to take place.

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

(5) The Chairperson shall, in writing, revoke any suspension imposed under subsection (4) in the event that such criminal proceedings are discontinued, the proceedings against the member are dismissed by the court or the member is acquitted.

(6) Upon the revocation under subsection (5), the member shall be entitled to resume his or her position and, if he or she has served less than one term of office, to seek re-appointment as a member.

Filling of vacancy

11. (1) When a member vacates office pursuant to section 10 of this Act, the Chairperson shall inform the Minister in writing and another member shall be appointed or elected under section 6.

(2) This section 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.

Remuneration of members

12. A member shall be paid such allowances and such travelling, accommodation and subsistence expenses incurred during his or her service on the Board as shall be determined by the Minister.

Part III – Meetings and Proceedings of Board

Meetings of Board

13. (1) Subject to the provisions of this Act, the Board shall regulate its own procedure for meetings.

(2) The Board shall meet four times in a year for the discharge of its functions, and such meetings shall be held at such places and times and on such days as the Chairperson may determine in consultation with the Chief Executive Officer.

(3) Notwithstanding subsection (2), there shall be at least one ordinary meeting in each quarter of the year and where the Chairperson is of the opinion that a matter ought to be considered by a meeting of the Board before the next meeting of the Board under subsection (2), he or she may call a special meeting of the Board for that purpose.

(4) Meetings of the Board shall be called by the Chairperson giving at least 14 days' notice unless all members consent to shorter notice.

(5) The Chairperson shall provide to each member the agenda, time and place for the meeting and any materials which support each agenda item at the time when the notice for the meeting is issued.

(6) A quorum for a meeting of the Board shall be a simple majority of its members.

(7) Where the members form a quorum, the proceedings of any meeting of the Board shall not be considered invalid by reason of the fact that there exists a vacancy in its number.

(8) At any meeting of the Board, the Chairperson shall preside, and in his or her absence, the Vice Chairperson and in the absence of both the Chairperson and the Vice Chairperson, the members present shall elect from among their number, a Chairperson for the purposes of that meeting.

(9) Any decision of the Board shall be taken by resolution of two thirds majority of the members present at any meeting of the

Board, and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote as a member.

(10) Minutes of each meeting of the Board shall be kept and shall be confirmed at a subsequent meeting of the Board.

(11) Where a member is disqualified from sitting in a meeting in terms of section 9 and where the members present form a quorum there shall not be considered to be any defect in the proceedings of the Board.

Co-opted members

14. (1) Subject to section 9, the Board may invite any person, not being a member to attend any Board meeting or otherwise assist it with its deliberations, and any person so invited shall not have any voting or other rights on the Board.

(2) The provisions of sections 12, 16 and 17 shall, with necessary modifications, apply to a co-opted member.

Signification of documents

15. All documents made by, and all decisions of, the Board shall be signified under the hand of the Chairperson, any member or senior officer of the Council generally or specially authorised in that behalf.

Conflict of interest

16. (1) Where a member is present at a meeting of the Board, 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 shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question relating to that matter.

(2) Where a member does not comply with subsection (1), and a decision by the Board is made benefitting such member, such decision shall be null and void to the extent that it benefits such member.

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

(4) A member who contravenes subsection (1) commits an offence and is liable to a fine of not more than P2 000 or to imprisonment for a term of not more than six months, or to both.

Confidentiality

17. (1) A member shall not disclose any confidential information relating to the affairs of the Board, which he or she acquired during the performance of his or her duties under this Act.

(2) Notwithstanding the provisions of subsection (1), a member may disclose information relating to the affairs of the Board acquired during the performance of his or her duties –

- (a) within the scope of his or her duties under this Act; or
- (b) when required to -
 - (i) by an order of court,
 - (ii) under any written law, or
 - (iii) in the investigation of an offence.

(3) A member who contravenes subsection (1), commits an offence and is liable to a fine of not more than P2 000 or to imprisonment for a term of not more than six months, or to both.

Committees of Board

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

(2) The Board may appoint to the committees constituted under subsection (1), such number of persons, not being members, as it considers appropriate, and such persons shall hold office for such period as the Board shall determine.

(3) Subject to any specific or general directions given by the Board, a committee may regulate its own procedure.

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

(5) Each committee shall keep minutes of its meetings and shall keep the Board informed of its activities in writing.

(6) The members of a committee shall appoint a chairperson

from among their number who shall chair committee meetings.

(7) The provisions of sections 11, 12, 13, 14, 15, 16 and 17 shall, with necessary modifications, apply to a member of a committee.

Part IV – Chief Executive Officer and Staff of Board

Appointment of Chief Executive Officer

19. (1) There shall be a Chief Executive Officer for the Council who shall be appointed by the Minister, on the recommendation of the Board, on such terms and conditions as may be specified in the instrument of appointment.

(2) No person shall be qualified for appointment to the position of Chief Executive Officer unless he or she -

(a) has satisfied the Board that he or she is unlikely to have any conflicts of interest, and in particular that he or she is not, and will not, during his or her employment with the Council, be engaged in any other occupation; and

(b) is otherwise a suitable candidate for appointment to the position of Chief Executive Officer.

(3) The Chief Executive Officer shall, subject to such specific or general directions on matters of policy as may be given by the Board, be charged with the overall responsibility for -

(a) the efficient administration and organisation of the Council;

(b) the procurement and management of the facilities of the Council;

(c) the oversight of the finance and accounting functions of the Council;

(d) ensuring that the accounts and records are kept in a proper manner so as to enable the annual audit to be carried out;

(e) ensuring the recommendations of the auditors are implemented;

(f) overseeing the daily operations of the Council;

- (g) maintaining a register of members of the Council in such form as may be prescribed;
- (h) performing the functions of Board Secretary and causing the minutes of meetings to be recorded;
- (i) keeping minutes of meetings and such other documentation as may be prescribed;
- (j) the control of the employees of the Council; and
- (k) the implementation of the provisions of this Act, and the decisions of the Board,

and in performing these functions, shall report directly to the Board.

(4) The Chief Executive Officer may delegate to any senior officer of the Council, the exercise of any powers which he or she is authorised to exercise under this Act.

(5) The Chief Executive Officer may resign from office by giving three months notice in writing to the Board.

(6) Notwithstanding the provisions of subsection (5), the Minister may remove the Chief Executive Officer from office at any time, without giving notice if he or she -

- (a) misconducts himself or herself;
- (b) is involved in such a conflict of interest as shall warrant his or her removal from office;
- (c) is adjudged bankrupt or insolvent;
- (d) becomes mentally or physically incapable of performing his or her duties or if there arises any doubt as to whether he or she is physically or mentally incapable, he or she shall either submit himself or herself, or at the request of the Board shall submit to a medical examination by two registered medical practitioners who are not personally known to him or her;

- (e) absents himself or herself from his or her duties without reasonable cause or explanation;
- (f) is convicted of a criminal offence which carries with it the possibility of a term of imprisonment, whether or not such term is imposed, or if imposed, is suspended, and such conviction is not overturned on appeal or a free pardon is granted; or
- (g) conducts himself or herself in such a way that the Board by unanimous resolution recommends the removal of the Chief Executive Officer from office.

Appointment of senior officers and other staff

20. (1) The Board shall appoint the senior officers of the Council on the recommendation of the Chief Executive Officer, on such terms and conditions as the Board shall determine, and in making such appointments, the Board shall have regard to the need for such officers to have appropriate knowledge and experience to perform their duties.

(2) The Chief Executive Officer shall appoint such members of staff as may be necessary for the proper discharge of the functions of the Council on such terms and conditions as the Board shall determine.

(3) The terms and conditions of employment of the staff of the Council shall be determined by the Board in each member of staff's contract of employment which contract of employment may make provision for the payment to such member of staff and his or her dependants, of such benefits, gratuities or other allowances as the Board may determine.

(4) The benefits, allowances and gratuities referred to under subsection (3) shall be paid from the Council's revenues.

Part V – Financial Provisions

Funds of Council

21. (1) The funds of the Council shall consist of –

- (a) such subscription fees as the Council may impose for membership;

- (b) grants, contributions, donations and endowments from any source;
- (c) monies that may be appropriated by the National Assembly; and
- (d) monies generated through fundraising activities of the Council.

(2) The Council may invest surplus monies with the approval of the Minister.

Financial year

22. The financial year of the Council shall be a period of 12 months commencing on 1st April each year and ending on 31st March of the following year.

Accounts and audit

23. (1) The Council shall keep proper accounts and records in relation to its funds and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities and income and expenditure of the Council in a form which shall conform to the best international accounting standards.

Cap. 46:10

(2) The Council shall appoint an independent auditor registered under the Financial Reporting Act to audit accounts of the Council in respect of each financial year, within three months after the end of the financial year.

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

- (a) he or she has received all the information and explanations, which to the best of the auditor's knowledge and belief, were necessary for the performance of his or her duties as auditor;
- (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 view of the transactions and financial affairs of the Council.

Provision of accounts to Minister

24. (1) The Council shall submit a copy of the audited accounts of the Council, together with the report of the auditor, within 30 days of their completion and within six months after the end of the financial year, to the Minister.

(2) The Minister shall, within 30 days of receipt of the account and reports under subsection (1), lay the auditor's accounts and report before the National Assembly.

Part VI – Registration with Council

Registration with Council

25. (1) A person registered as –

(a) a society under the Societies Act; or

(b) a company under the Companies Act,

whose objectives include the promotion of arts and culture may apply to the Council in such manner as may be prescribed, to be registered with the Council.

(2) The Council shall notify the society or company referred to under subsection (1), in writing, of its decision on the application.

Refusal to register

26. Where the application referred to under section 25(1) does not meet the requirements, the Council shall reject the application and notify the society or company in writing, stating the reasons for refusal to register.

Suspension of registration

27. The Council may suspend the registration of a society or company for such period as may be prescribed where the society or company contravenes this Act.

Annual subscription

28. (1) A society or company registered with the Council shall pay an annual subscription fee as may be prescribed.

(2) A society or company which fails to pay its annual subscription fee within such a period as may be prescribed shall not, until that subscription fee is paid to the Council –

(a) take part in the proceedings of any meeting of the

Council; or

- (b) be considered for any assistance or funding by the Council.

Revocation of registration

29. The Council may revoke the membership of a society or company registered with the Council where –

- (a) the objectives of that society or company become inconsistent with the objectives of the Council;
- (b) the society ceases to be registered as a society under the Societies Act; or
- (c) the company ceases to be registered as a company under the Companies Act.

Renewal of registration

30. A society or company registered with the Council which wishes to renew its registration shall submit its application for renewal to the Council in such a manner as may be prescribed and accompanied by such renewal fee as may be prescribed.

Annual general meetings of Council

31. (1) The Council shall hold a meeting to be called the annual general meeting of the Council.

(2) Where the Chairperson is of the opinion that a matter concerning the Council ought to be considered by a meeting of the Council before the next annual general meeting of the Council, he or she may call a special general meeting of the Council for that purpose.

(3) Where the Chairperson is informed in writing by two-thirds majority of the societies registered with the Council that they wish a matter concerning the Council to be considered by a meeting of the Council before the next annual general meeting of the Council, he or she shall call a special general meeting of the Council for that purpose.

(4) The following persons are entitled to take part in the proceedings of the annual general meeting or special general meeting of the Council –

- (a) the members of the Board; and
- (b) two delegates from and representing each society or company registered with the Council.

(5) An annual general meeting or special general meeting of the Council shall not be held otherwise than as provided by this section.

(6) The society or company referred to under section 25(1) shall, where its application has been approved by the Council, be confirmed as a member of the Council at an annual general meeting of the Council.

(7) The Council shall, during an annual general meeting, elect members of the Board as set out under section 6(1).

(8) The business to be conducted at each annual general meeting of the Council includes -

- (a) the presentation and discussion of the Board's annual report on the activities of the Council;
- (b) the presentation and discussion of the annual financial statement in respect of the immediately preceding financial year together with the auditor's annual report on the Council's accounts in respect of that year;
- (c) the presentation, discussion and approval of the annual estimates in respect of the immediately following financial year;
- (d) the consideration of any pending applications for registration with the Council;
- (e) the conduct of the election prescribed by subsection (7); and
- (f) the consideration of motions.

Dispute resolution

32. (1) The Council shall resolve any dispute that is referred to it.

(2) Where a dispute arises between societies registered with the Council, the dispute shall be resolved in a manner as may be prescribed.

(3) Any society or company registered with the Council aggrieved by a decision of the Council may appeal to the Appeals Committee established under section 33.

*Establishment of
Appeals Committee*

33. (1) Subject to the provisions of this Act, the Board shall establish a committee to be known as the Appeals Committee consisting of a Secretary and such members as the Minister may appoint.

(2) Any person aggrieved by a decision of the Council, except a decision made under section 10, may appeal to the Appeals Committee established under subsection (1).

(3) An appeal to the Appeals Committee shall be lodged, by hand or by registered mail, within seven days from the date of notification of the decision appealed against and shall be accompanied by such a fee as may be prescribed.

(4) The appellant shall at the time of lodging his or her appeal also serve copies of the documents of the appeal, by registered mail, on the person who is a party to the proceedings being appealed against and on the Chairperson.

(5) The secretary of the Appeals Committee appointed under subsection (1) shall, within seven days of receiving all documents and information in connection with the appeal under subsection (3), forward sufficient copies of the appeal documents and the relevant information to the members of the Appeals Committee.

(6) The Appeals Committee shall, after receiving the appeal documents and information, set a date for the hearing of the appeal and cause a notice of the hearing to be served upon the appellant and the respondent.

(7) On the day fixed or any other day to which the Appeals Committee may adjourn the hearing, the appellant shall be heard in support of his or her appeal but shall not be heard in support of any ground of appeal not set forth in the appeal papers or documents except by leave of the Appeals Committee.

(8) The Appeals Committee shall, if it does not dismiss the appeal summarily, hear the appellant and the respondent shall be entitled to reply.

(9) The parties to an appeal shall be heard in person.

(10) A person aggrieved by a decision of the Appeals Committee may, within 30 days of the decision, appeal to the Minister.

Part VI – General

Regulations

34. The Minister may make regulations prescribing anything under this Act which is 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.

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