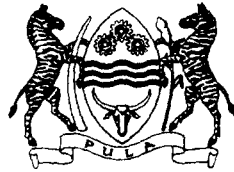


THE BOTSWANA HOUSING CORPORATION ACT, 1970

No. 75



of 1970

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short Title and Commencement
2. Interpretation

PART II

ESTABLISHMENT, CONSTITUTION AND MEMBERSHIP OF THE CORPORATION

3. Establishment of the Corporation
4. Constitution
5. Tenure of Office
6. Disqualification of Members
7. Temporary Members
8. Payment of Members

PART III

MEETINGS AND PROCEEDINGS OF THE CORPORATION

9. Presiding Officer
10. Meetings
11. Signification of Documents

PART IV

OFFICERS, EMPLOYEES AND AGENTS OF THE CORPORATION

12. Appointment of Officers and Employees
13. Delegation to Committee

PART V

FUNCTIONS, POWERS AND DUTIES OF THE CORPORATION

14. Functions and Powers
15. Power to Contract
16. Co-operation with Authorities
17. Research and Records
18. Power of Minister to Give Directions

PART VI

FINANCES

19. Funds of the Corporation
20. Financial Policy of the Corporation
21. Borrowing Powers of the Corporation
22. Investment
23. Vesting of Property in the Corporation
24. Accounts and Audit
25. Bad Debts
26. Liability to Pay Tax, etc.

PART VII

ENTRY UPON, AND COMPULSORY ACQUISITION OF LAND

27. Entry upon Land
28. Compulsory Acquisition of Land

PART VIII

GENERAL

29. Annual Report
30. Power to Call for Information
31. Power to make Bye-Laws
32. Service of Notice
33. Protection from Personal Liability

**AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A CORPORATION
TO BE KNOWN AS THE BOTSWANA HOUSING CORPORATION FOR THE
PROVISION OF HOUSING AND TO PROVIDE FOR MATTERS INCIDENTAL
THERE TO AND CONNECTED THEREWITH.**

Date of Assent: 29.12.1970

Date of Commencement:

ENACTED by the Parliament of Botswana.

PART I
PRELIMINARY

Short Title and Commencement

1. This Act may be cited as the Botswana Housing Corporation Act, 1970, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

Interpretation

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

“Chairman” means the Chairman of the Corporation appointed under subsection (1) of section 4;

“Corporation” means the Botswana Housing Corporation established by section 3;

“financial year” means the period of twelve months ended on the 31st March in each year;

“Government housing undertakings” means works established and arrangements concluded by the Government for the purpose of providing housing in Botswana;

“house” means a building designed or adapted for human habitation and includes the site thereof and the usual appurtenances, outbuildings, fences and permanent provision for lighting, water supply, drainage and sewerage;

“housing estate” means a tract of land on which houses have been, or are being, or are about to be constructed in the carrying out of a single project;

“housing scheme” means a proposal for the construction of several houses, whether or not the proposal includes the acquisition of land for such houses or the laying out, replanning, subdivision and development of the land for building sites, which proposal may include such proposals for the provision of roads, drains, sewers, other public services, open spaces and other improvements as may conveniently subserve such proposal;

“local authority” means a town council or other township authority constituted under regulations made under the Townships Proclamation (Chapter 120) or a district council established under the provisions of the Local Government (District Councils) Law, 1965;

“member” means a member of the Corporation and includes the Chairman and Deputy Chairman.

PART II
ESTABLISHMENT, CONSTITUTION AND MEMBERSHIP OF
THE CORPORATION

Establishment of the Corporation

3. (1) There is hereby established a Corporation to be known as the Botswana Housing Corporation.

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

Constitution

4. The Corporation shall consist of a Chairman and not less than six nor more than eight other members, who shall be appointed by the Minister by notice in the *Gazette*.

Tenure of Office

5. (1) A member of the Corporation, other than the Chairman, shall hold office for such period not exceeding four years, as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for re-appointment:

Provided that in appointing members of the Corporation the Minister shall specify such periods of appointment that the periods of appointment of not more than one third of the members shall expire in any one year.

(2) The Chairman of the Corporation shall hold office as Chairman for a period of three years, and may be reappointed for any further period of three years.

(3) The Corporation shall once in every year elect from among its members a Deputy Chairman who shall hold office as Deputy Chairman for a period of one year and shall be eligible for re-election.

Disqualification of Members

6. (1) No person shall be appointed a member —

- (a) if he has been declared insolvent or bankrupt under any law in any country and has not been rehabilitated or discharged or has made a composition with his creditors and has not paid his debts in full;
- (b) if he is incapacitated by physical or mental illness or infirmity from performing his functions;
- (c) if he is a member of the National Assembly;

- (d) if he has been sentenced to imprisonment without the option of a fine or has been convicted of an offence involving dishonesty ;
- (e) if he has such financial or other interest, whether in the operations of the Corporation or otherwise, as in the opinion of the Minister is likely to affect prejudicially the discharge by him of his functions as a member.

(2) If the Minister is satisfied that a member —

- (a) has become subject to any of the disabilities set out in sub-section (1);
- (b) has been absent from three consecutive meetings of the Corporation without the permission of the Corporation ;

(c) is otherwise unable or unfit to discharge the functions of a member; the Minister may declare his office as a member, or as a member and as Chairman or Deputy Chairman, as the case may be, to be vacant and thereupon his office shall become vacant.

(3) Notwithstanding the provisions of sub-section (2) the Minister may at any time remove a member from office as a member or as Chairman or Deputy Chairman.

Temporary Members

7. When the Minister is satisfied that the Chairman or any other member is incapacitated by illness, absence or other sufficient cause from satisfactorily performing the duties of his office, the Minister may appoint some fit person temporarily to act for the Chairman or such other member during such incapacity, and the person so appointed shall, while so acting, be deemed to be Chairman or a member of the Corporation as the case may be.

Payment of Members

8. The Corporation shall pay to the members thereof such remuneration, fees and allowances for expenses as may be approved by the Minister.

PART III

MEETINGS AND PROCEEDINGS OF THE CORPORATION

Presiding Officer

9. The Chairman, or in his absence the Deputy Chairman, or in the absence of both a member elected by the Corporation, shall preside at all meetings of the Corporation, and the person presiding at any meeting, if not the Chairman, shall with respect to such meeting or any business transacted thereat have all the powers of, and be deemed to be, the Chairman.

Meetings

10. (1) (a) The Corporation shall hold ordinary meetings as and when necessary, but so that ordinary meetings are held not less frequently than once in every four months.
(b) Ordinary meetings of the Corporation shall be convened by the Chairman at such times and places as he may in his discretion deem fit.
(2) The Chairman, or in his absence the Deputy Chairman, shall at any time convene a special meeting of the Corporation upon receipt of a requisition signed by three members calling upon him to do so, and such special meeting shall be held not later than one month after receipt of such requisition.
(3) In the event of an equality of votes the Chairman shall have a casting as well as a deliberative vote; subject thereto, the decision of the majority of the members present and voting at any meeting of the Corporation shall be deemed to be the decision of the Corporation.
(4) Any member of the Corporation who has an interest, or whose spouse has an interest, in any company or undertaking with which the Corporation proposes to make a contract, or has an interest in any contract which the Corporation proposes to make, shall disclose the nature of such interest and shall not vote or take any part in the proceedings of the Corporation relating to such contract.
(5) Any member of the Corporation who contravenes sub-section (4) by failing to disclose an interest or by voting or by participating in proceedings contrary to the provisions of that sub-section shall be guilty of an offence and liable on conviction to a fine of R500, or in default of payment, to imprisonment for six months or to both such fine and such imprisonment, and the Court before which he is convicted may order that he shall account to the Corporation for any profits which may accrue or have accrued to him or his spouse, as the case may be, in respect of any such contract.
(6) At any meeting of the Corporation a quorum shall be constituted by not less than one half of the members of the Corporation.
(7) No act, decision or proceeding of the Corporation shall be questioned on account of any vacancy in the membership thereof, or on account of the appointment of any member of the Corporation being defective, if the act was done or authorised or the decision was made or the proceeding took place by or in accordance with a majority vote of the persons who at the time were entitled to act as members.
(8) The Corporation may from time to time make standing orders providing for the regulation of —
 - (a) the meetings of the Corporation;
 - (b) the conduct of its business and other operations in carrying out its functions; and

- (c) the duties of its officers, employees and agents.

Signification of Documents

11. All documents made by, and all decisions of, the Corporation may be signified under the hand of the Chairman, or the General Manager, or any member of the Corporation authorised in that behalf by the Corporation.

PART IV

OFFICERS, EMPLOYEES AND AGENTS OF THE CORPORATION

Appointment of Officers and Employees

12. (1) The Corporation shall, with the approval of the Minister, appoint a General Manager on such terms and conditions as to remuneration and otherwise as it may determine.

(2) The General Manager shall be —

- (a) a person with a proved record of success in housing administration, preferably within a large organisation, and with experience in all aspects of the subject, namely housing design, construction, administration, finance, and management;
- (b) the chief executive officer, and secretary to, the Corporation and shall, subject to such direction on matters of general policy as may be given, and such other decisions as may be made, by the Corporation, be charged with the direction of the business of the Corporation and of its administration and organisation and also with the control of the employees of the Corporation.
- (3) (a) The Corporation shall, on consideration of the recommendations of the General Manager, from time to time determine the staff necessary for the proper discharge of the Corporation's functions and the terms and conditions of employment.
- (b) The appointment and dismissal of all persons to or from positions designated by the Corporation as held by senior officers shall be effected by the Corporation on consideration of the recommendations of the General Manager.
- (c) The appointment and dismissal of all other staff shall be effected by the General Manager, or such senior officer as he may select to perform that function.

(4) The Corporation may, with the approval of the Minister —

- (a) grant pensions, gratuities or retiring allowances to any officers or employees and may require such officers and employees to contribute to any pension or contributory schemes, including any provident fund which the Corporation may establish;

- (b) establish and make contributions to a provident, pension or superannuation fund and a medical fund for its officers and employees;
- (c) from time to time appoint and employ upon such terms and conditions as it may think fit such agents and contractors as it may deem necessary.

Delegation to Committee

13. The Corporation may, by resolution, delegate to any committee of the Corporation the exercise of any of the powers which the Corporation is authorised by this Act to exercise either generally or in any particular case.

PART V

FUNCTIONS, POWERS AND DUTIES OF THE CORPORATION

Functions and Powers

14. (1) The functions of the Corporation shall be —
- (a) to provide for the housing needs of Government and local authorities;
 - (b) to provide, and to assist and to make arrangements for other persons to provide, houses; and
 - (c) to undertake and carry out, and to make arrangements for other persons to undertake and carry out, housing schemes in Botswana.
- (2) The Corporation shall have all powers necessary or convenient for the performance of its functions and duties and, without prejudice to the generality of the foregoing, may —
- (a) undertake the management of land, houses, classes of houses and housing estates in respect of which the Government transfers, vests, makes over or entrusts ownership or lesser rights or interests to the Corporation;
 - (b) carry out surveys and assessments of needs for housing of every kind throughout Botswana;
 - (c) devise, undertake and carry out programmes for the provision of housing;
 - (d) determine priorities in accordance with which such programmes shall be undertaken;
 - (e) undertake the construction and management of houses and the development and management of housing estates and, where appropriate, the development and management of other properties;
 - (f) devise, prepare, undertake and carry out housing schemes;
 - (g) sell houses outright or on terms of tenant purchase or otherwise, or lease houses;

- (h) purchase, hold, or manage any land or interest in or right over land, and sell, lease or otherwise dispose of any land or interest in or right over land owned or held by the Corporation upon such conditions as the Corporation may determine (including, in the case of sale by the Corporation, conditions as to payment of the price upon deferred terms): Provided that a lease granted by the Corporation shall not be assigned by the lessee, nor shall the lessee under a such lease sublet;
- (i) either for or in connection with any house or building or housing estate owned, developed, constructed or managed by the Corporation, provide, and where appropriate maintain, roads, footways, bridges, drains, sewers and watercourses other than those the maintenance of which the Government or a local authority has undertaken or decides to undertake;
- (j) acquire, construct, maintain or repair any vehicle, plant or apparatus necessary or desirable for the performance of the functions of the Corporation;
- (k) enter into agreements with any person —
 - (i) for the supply, construction, manufacture, maintenance or repair by such person of any movable property that is necessary for the performance of the functions of the Corporation;
 - (ii) for the provision by such person of any services that may be provided by the Corporation;
- (l) subject to the approval of the Minister, enter into agreements with any person for the management by such person of any housing estate owned by the Corporation;
- (m) subject to the further provisions of this Act, raise money on loan for the purpose of funding housing programmes;
- (n) lend money for the construction of houses or to enable housing schemes to be carried out;
- (o) administer on an agency basis such housing funds as may lawfully be entrusted to the Corporation by the Government or any local authority.

Power to Contract

15. (1) The Corporation may enter into such contracts as may be necessary or expedient for the carrying out of its functions under this Act.

(2) Any contract may be entered into, and any instrument may be executed, on behalf of the Corporation by any person generally or specially authorised by the Corporation for that purpose.

Co-operation with Authorities

16. In the discharge of its functions the Corporation shall co-operate with local and other public authorities, including departments, agencies and instruments of the Government, and shall consult with local authorities in matters of concern to the Corporation which affect their interests.

Research and Records

17. With a view to facilitating present or future research or planning, the Corporation shall keep full and accurate records of all its operations and shall have power to engage in research, and to assist others to engage in research, in respect of any matter relating to its functions, and to publish such records and the results of any such research.

Power of Minister to Give Directions

18. The Minister may, after consultation with the Corporation, give to the Corporation such directions of a general or specific character as to the exercise and performance of its powers in fulfilling its functions as are necessary as a matter of public policy and as are not inconsistent with this Act or with the contractual or other legal obligations of the Corporation, and the Corporation shall give effect to any such directions.

PART VI FINANCES

Funds of the Corporation

19. (1) The funds of the Corporation shall comprise —
- (a) sums borrowed in terms of section 21 (1);
 - (b) revenue accruing from the activities of the Corporation;
 - (c) such sums as may be appropriated for the activities of the Corporation by the National Assembly; and
 - (d) contributions or endowments from any other source.

Financial Policy of the Corporation

20. (1) The Corporation shall so manage its business that taking one year with the next —

- (a) its revenue is sufficient for meeting all expenditure properly chargeable to revenue;
- (b) sufficient provision is made for depreciation of assets.

(2) Except in so far as is required by sub-section (1) the making of profits shall not be the object of the activities of the Corporation.

Borrowing Powers of the Corporation

21. (1) The Corporation may, with the approval of the Minister given with the concurrence of the Minister responsible for Finance and subject to such conditions as he, with such concurrence, may determine, borrow sums in order to enable it to discharge its functions under this Act and to meet its obligations, provided that the Corporation shall not borrow under this section so as to have outstanding at any time an aggregate amount exceeding twenty million rands or such other sum as may from time to time be approved by resolution of the National Assembly.

(2) The powers of the Minister under this section shall extend to the amount (within the maximum specified under sub-section (1)), the nature and sources of the borrowing, and the time at and conditions on which the borrowing may be effected, and his approval may be either general or limited to a particular borrowing.

(3) Failure to enquire whether the borrowing of any money is within the power of the Corporation shall not preclude a person lending such money to the Corporation from enforcing the contract under which the money is lent.

Investment

22. (1) The Corporation may, with the approval of the Minister, given with the concurrence of the Minister responsible for Finance and subject to such conditions as he may, with such concurrence, determine, invest —

- (a) such part of its funds as are not required for the purposes of its functions; and
- (b) the moneys forming part of its reserve funds and any provident fund established by the Corporation.

(2) The powers of the Minister under this section shall extend to the amount which may be invested and the nature of the investment and the terms and conditions thereof, and his approval may be either general or limited to a specific investment.

Vesting of Property in the Corporation

23. (1) Any properties, assets, rights, debts, liabilities and obligations of the Government, and the benefit and burden of all contracts made by or on behalf of the Government, which are part of or concern or relate to the Government housing undertakings may, with the consent of the Corporation, be transferred to and vest in the Corporation as hereinafter provided on terms and conditions agreed to by the Corporation.

(2) The Minister may from time to time by notice in the *Gazette* designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government, and contracts made by or on behalf of the Govern-

ment which are part of, or concern or relate to the Government housing undertakings, and as from the date specified in any such designation the properties, assets, rights, debts, liabilities and obligations so designated and the benefit and burden of the contracts so designated shall vest in the Corporation.

Accounts and Audit

24. (1) The Corporation shall keep proper accounts and other records in relation thereto and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities (real or contingent), and income and expenditure of the Corporation. The form of the accounts and of the statement shall be such as to secure the provision of separate information in respect of each of the housing schemes and of the other activities of the Corporation.

(2) The accounts of the Corporation in respect of each financial year shall within four months after the end thereof be audited by auditors to be appointed by the Corporation with the approval of the Minister:

Provided that no person shall be qualified to be so appointed if he is a member, officer or servant of the Corporation or unless he holds one or more of the qualifications referred to in section 124 (1) of the Companies Proclamation, 1959.

(3) The auditors shall report in respect of the accounts for each financial year, in addition to any other matters which they deem pertinent to comment on, whether or not —

- (a) they have received all the information and explanations which, to the best of their knowledge and belief, were necessary for the performance of their duties as auditors ;
- (b) the accounts and related records of the Corporation have been properly kept ;
- (c) the Corporation has complied with all the financial provisions of this Act with which it is the duty of the Corporation to comply; and
- (d) the statement of accounts prepared by the Corporation 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 Corporation.

(4) The Corporation shall, within 30 days of receiving the report of the auditors, send such report and a copy of the audited accounts to the Minister.

(5) The Minister shall, within 30 days of receiving the report and a copy of the audited accounts, lay such report and accounts before the National Assembly.

Bad Debts

25. The Corporation may, with the approval of the Minister given in relation to individual debts, write off bad debts.

Liability to Pay Tax, etc.

26. Nothing in this Act shall exempt the Corporation from any tax, duty, rate, levy or other charge whatsoever, whether general or local.

PART VII

ENTRY UPON, AND COMPULSORY ACQUISITION OF LAND

Entry upon Land

27. (1) In so far as is required in order to secure the development or utilisation of property for the provision of housing in the national interest the Corporation may by such assistants, servants or agents and with such workmen, animals, vehicles, appliances and instruments as are necessary for the purpose of investigating and planning the use of land for housing enter upon any land and —

- (a) (i) survey and take levels of land;
- (ii) dig or bore under the sub-soil;
- (iii) do all other acts necessary to ascertain whether land is suitable for housing purposes;
- (b) clear, set out and mark the boundaries of land in respect of which it is proposed to prepare a housing scheme:
Provided that —
 - (i) no person shall enter upon any land or into any building or enclosed place thereon (except with the consent of the owner or occupier thereof) without previously giving such owner or occupier at least seven days' notice of his intention to do so;
 - (ii) reasonable notice of the intention to exercise any of the other powers conferred by this sub-section shall be given to the owner or occupier of the land;
 - (iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this sub-section.

(2) After any entry upon land made under sub-section (1), the Corporation shall promptly pay such compensation (if any) as may be adequate for any damage done or acts performed in pursuance of paragraph (a) or (b) of sub-section (1); and any dispute as to the interest or right of any person claiming an interest in or right over such land, the legality of such entry or acts, or the amount (if any) of compensation to which such person may be entitled by reason of such damage or acts may, if the amount of compensation claimed does not exceed the jurisdiction of a Subordinate Court of the First Class having jurisdiction in the area

where the land is situated, be referred by any party to such dispute to such Court, whose decision shall be subject to an appeal to the High Court, and, if the amount claimed does exceed the said jurisdiction, such dispute may be referred to the High Court; and any person aggrieved by any delay in the payment of compensation due to him may apply to the High Court for the purpose of obtaining prompt payment thereof.

Compulsory Acquisition of Land

28. (1) The Corporation may, with the approval of the President and subject to such conditions as he may impose, by compulsory purchase acquire such land and interests in or rights over land as are necessary for the purpose of providing housing or works ancillary thereto by way of housing schemes or otherwise.

(2) No land or interest in or right over land shall be acquired in terms of sub-section (1) except where the acquisition is necessary or expedient in order to secure the development or utilisation of property for the provision of housing or works ancillary thereto in the national interest.

(3) Application for the approval of the President in terms of sub-section (1) shall be made on notice to every person having an interest in or right over the land, interest or right which the Corporation proposes to acquire.

(4) The President shall not grant approval in terms of sub-section (1) unless he is satisfied —

(a) that the Corporation is unable to acquire the land, interest or right on reasonable terms by agreement with the owner or holder thereof; and

(b) that such land, interest or right is reasonably required by the Corporation for the purpose mentioned in sub-section (1).

(5) When granting approval in terms of sub-section (1) the President shall fix a date upon which the acquisition shall take effect.

(6) Adequate compensation shall be promptly payable by the Corporation to any person having an interest in or right over any property acquired in terms of sub-section (1), and any dispute as to such interest or right, the legality of the acquisition, or the amount of compensation to which any such person may be entitled by reason of the acquisition shall be determined in accordance, *mutatis mutandis*, with the provisions of the Acquisition of Property Proclamation (Chapter 118), and for the purpose of such determination and for the purpose of obtaining prompt payment of compensation such person shall have all the rights of access to the High Court provided by the said Proclamation.

PART VIII

GENERAL

Annual Report

29. (1) The Corporation shall, when sending the auditors' report and copy of the audited accounts in respect of each financial year in terms of section 24(4), submit to the Minister a comprehensive report on its operations during such year and the Corporation shall publish it in such manner as the Minister may specify.

(2) The Minister shall lay the Corporation's report before the National Assembly within 30 days of his receiving such report.

Power to Call for Information

30. The Minister may, for purposes associated with the administration of this Act, require the Corporation to provide him with estimates of the Corporation's future revenue and expenditure, and with such other information relating to its activities and operations, including books of accounts, records and documents, as he may reasonably require for those purposes.

Power to make Bye-Laws

31. The Corporation may, with the approval of the Minister, make bye-laws for any purpose connected with its powers, functions and duties under this Act, and without prejudice to the generality of the foregoing may make bye-laws prescribing or providing for —

- (a) procedure for the allocation of houses by the Corporation to applicants;
- (b) procedure for the assessment of rents to be paid for houses let by the Corporation;
- (c) rates of interest, charges and conditions to be specified in agreements made by the Corporation in respect of houses sold by it upon terms of deferred payment; and
- (d) rates of interest, charges and conditions in respect of loans made by the Corporation for the construction of houses:

Provided that bye-laws under paragraph (b), (c) or (d) shall not be approved by the Minister without the concurrence of the Minister responsible for Finance.

Service of Notice

32. Any notice, order or other document may be served upon the Corporation by delivering it, or by properly addressing, prepaying and posting it by registered post, to the General Manager at the headquarters of the Corporation at Gaborone.

Protection from Personal Liability

33. No matter or thing done or omitted by any member of the Corporation or by any officer or employee of the Corporation shall, if the matter or thing is done or omitted *bona fide* in the course of the operations of the Corporation, render such person, or any persons acting by his direction, personally liable to any action, claim or demand.

Passed by the National Assembly this day, the 18th December, 1970.

G.T. MATENGE,
Clerk of the National Assembly,