

**BOTSWANA COLLEGE OF DISTANCE AND OPEN LEARNING
ACT, 1998**

No. 20



of 1998

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An Act to provide for the establishment of the Botswana College of Distance and Open Learning, to provide for its powers, duties and functions and for matters incidental thereto.

Date of Assent: 21.12.98.

Date of Commencement: 31.12.98.

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

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| Short title | 1. This Act may be cited as the Botswana College of Distance and Open Learning Act, 1998. |
| Interpretation | 2. In this Act, unless the context otherwise requires —
“Board” means the Board of the College appointed under section 4;
“Chairperson” means the Chairperson of the Board appointed under section 4;
“College” means the Botswana College of Distance and Open Learning established under section 3;
“Director” means the Chief Executive of the College appointed under section 14;
“distance learning” means a mode of delivering education to persons situated at a distance from the College, without such persons necessarily attending classes;
“member” means a member of the Board appointed under section 4;
“regional centres” means designated places within the country for providing support services to the students of the College. |

PART II — *Establishment of College*

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| Establishment of College | 3. (1) There is hereby established a college to be known as the Botswana College of Distance and Open Learning.
(2) The College 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. |
| Board of Governors | 4. (1) There shall be a Board appointed by the Minister to carry out the powers and functions of the College.
(2) The Board shall consist of 13 members appointed as follows —
(a) 10 members nominated by their respective organisations as follows: |

- (i) two persons to represent the Ministry of Education;
- (ii) a representative of the Directorate of Public Service Management;
- (iii) a representative of the Botswana Training Authority;
- (iv) a representative of the Ministry of Labour and Home Affairs;
- (v) a representative of the Ministry of Finance and Development Planning;
- (vi) a representative of the Botswana Federation of Trade Unions;
- (v) a representative of the Centre for Continuing Education;
- (vi) a college staff representative; and
- (vii) a private tertiary institution representative;
- (b) two persons representing the private sector of the Minister's predilection; and
- (c) the Director, who shall be an ex-officio member.

(3) The Minister shall designate one member to the Chairperson from among the members appointed under subsection (2)

(a) (i) to (v), and (b).

(4) The Board shall elect from among their number, the Vice-Chairperson.

(5) Members of the Board 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.

(6) The appointments to the Board shall be published by notice in the *Gazette*.

5. (1) The primary function of the College shall be to provide quality education through open and distance learning, and to do all things as are necessary to enable students at the various levels qualifying for admission at the College, to obtain an education equivalent to a nationally recognised criteria.

Powers and
functions of the
College

(2) Without limiting the generality of subsection (1), the College shall —

- (a) offer Junior Certificate and Botswana Certificate of Secondary Education Courses;
- (b) provide vocational education and training courses and professional management programmes;
- (c) provide in service programmes to upgrade the skills of employees;
- (d) provide in service programmes for middle and junior management and secretarial cadres;
- (e) provide guidance and counselling services to students;
- (f) formulate and carry out the academic policy of the College;
- (g) devise and regulate courses of instruction and study;
- (h) advise the Minister on the requirements of admission of students;
- (i) prescribe disciplinary rules for the staff and students;
- (j) determine fees, commissions, charges and other payments for services and use of facilities of the College;
- (k) raise funds for the College;
- (l) take up, borrow and lend money; and
- (m) report on such matters as may be referred to it by the Director.

Seal of the
College

6. (1) The seal of the College shall be such device as may be determined by the Board and shall be kept by the Director.

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

(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 College by the Director or any other person generally or specifically authorised by the Board in that behalf.

Disqualifica-
tion,
resignation
and removal

7. (1) A person shall not be appointed as a member of the Board 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 rehabilitated or discharged;
 - (ii) made an assignment to, or arrangement or composition with, his creditors, which has not been rescinded or set aside; or
- (b) within the period of six years immediately preceding the date of his proposed 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 Board of which he has had notice;
 - (b) 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;
 - (c) contravenes the provisions of this Act or otherwise misconducts himself to the detriment of the objectives of the College; or
 - (d) has failed to comply with the provisions of section 9.
- (3) The office of a member of the Board shall become vacant after—
 - (a) a period of thirty days from the date of a ruling, against the member, is made on all applications and appeals made in respect of charges levelled against the member under subsection 1 (b);
 - (b) a period of thirty days has elapsed from the date the member is given a notice in writing by the Minister to vacate office; or
 - (c) 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) (c).

(4) A member of the Board may resign from office by giving three months notice in writing to the Minister.

8. 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 the office.

Filling of
casual
vacancy

9. (1) If a member is present at a meeting of the Board or any committee of the Board 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 Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

Disclosure
of interest

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

10. (1) Subject to the provisions of this Act, the Board may regulate its own procedure.

Proceedings
of the Board

(2) The Board 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 Board 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 eight members of the Board.

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

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

11. The Board may 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 —

Statutes

(a) regulating the appointment, conditions of service, termination of appointment and retirement benefits of the staff of the College;

(b) determining the persons authorised to sign contracts, cheques and other documents on behalf of the College, and otherwise regulate procedure in relation to transactions entered into by the College;

(c) determining the academic year of the College; and

(d) securing that the seal of the College is kept in proper custody and is used only by authority of the Board.

Committees
of the
Board

12. (1) The Board may appoint committees consisting of its members or of other suitably qualified persons.

(2) The Board may delegate any of its powers, functions or duties under this Act to a committee appointed under subsection (1).

Remuneration
and
allowances

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

PART III — *Officers, Academic Staff and Employees*

The Director

14. (1) The College shall have a Director who shall be appointed by the Minister on such terms and conditions as the Minister may determine.

(2) No person shall be appointed as a Director unless the person holds such qualifications and has such experience as the Minister may determine.

Powers of
the
Director

15. (1) The Director shall, subject to such directions on matters of policy as may be given by the Board, be responsible for the management of the day to day affairs of the College.

(2) Subject to the provisions of this Act, the Director shall —

(a) cause the provision of and monitor corporate secretarial services to the Board;

(b) exercise disciplinary powers over staff;

(c) cause proper books of accounts to be maintained for the College; and

(d) report to the Board on the activities of the College.

Appointment
and
conditions of
service

16. (1) The Board shall appoint the full time staff of the College and the Director shall, with the approval of the Board, appoint such other staff as may be necessary for the proper discharge of the functions of the College.

(2) The terms and conditions of employment of staff of the College shall be as may be determined by the Board, in consultation with the Minister.

(3) The Board may, with the consent of the Minister, second a member of staff to an organisation on such terms as shall be specified by the Board.

(4) The College may be assisted in the discharge of its functions, by a member of staff seconded from Government or from any other organisation.

Academic
qualifications
of Academic
staff

17. The College shall employ suitably qualified academic staff who shall hold qualifications as the College may determine.

PART IV — *Programmes and Students of the College*

Programmes
and courses
of the
College

18. (1) The College shall offer such academic, professional, vocational and technical education as may be determined by the Board.

(2) The College may offer programmes and courses in collaboration with other institutions or organisations nationally or internationally.

(3) The College shall use such distance and open learning methods as it may determine to deliver its programmes and courses.

19. (1) The College shall engage qualified academic staff on full time or part time basis to teach, tutor and guide the students of the College.

Teaching
methods

(2) The College shall protect teaching materials produced by the College or by any person employed by the College for such purpose, in accordance with the Copyright Act.

Cap. 68:01

(3) The College shall use regional centres and other existing national facilities as venues for learning, tests, examinations and other meetings that may be required between the students and the College.

20. (1) Subject to subsection (2), the medium of instruction at the College shall be the official language of Botswana.

Medium of
instruction

(2) Where it is deemed necessary in specified courses or subjects, the medium of instruction shall be in any other language.

21. Qualification for admission at the College shall be as may be determined by the College in its statutes.

Qualification
for admission

PART V — *Financial Provisions*

22. (1) The revenues of the College shall consist of —

Revenues of
the College

(a) moneys appropriated by the National Assembly for the purposes of the College;

(b) fees that the College may charge for services it may render;

(c) grants and donations that the College may receive; and

(d) income that the College may receive from rentals or sale of educational materials, land or building.

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

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

Financial
year

24. (1) The College 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 College, and shall prepare, in each financial year, a statement of such account.

Accounts
and audit

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

(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 auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the College have been properly kept;
- (c) the College has complied with all the financial provisions of this Act with which it is the duty of the College to comply; and
- (d) the statement of accounts prepared by the College 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 College.

(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 College by the auditor.

Annual
report

25. (1) The Board shall within a period of six months after the end of 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 College during such year, together with the auditors' report and the audited accounts as provided for in section 24.

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

PART VI — *General*

Indemnity

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

Transitional
provisions

27. 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 College.

Winding up of
College

28. The College shall not be wound up except by authority of an Act of Parliament.

Regulations

29. (1) The Minister may, following consultation with the Board, make Regulations prescribing anything under this Act which is to be prescribed or which, 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 provide for —

- (a) conditions for suspension, expulsion and withdrawal;
- (b) the formulation and modulations of courses of instruction;
- (c) regulating the conduct of examinations and awards of certificate;
- and

- (d) determining fees, commissions, charges and other payments for services and use of facilities of the College.

PASSED by the National Assembly this 9th day of December, 1998.

C.T. MOMPEI,
Clerk of the National Assembly.