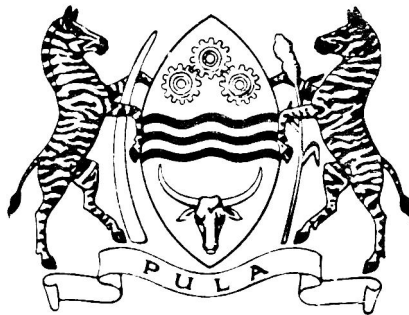




REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

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Bill No. 4 of 1978

SOCIETIES (AMENDMENT) BILL, 1978

(Published on 13th February, 1978)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The first object of the Bill is to amend the Societies Act (Cap. 18:01) in order to change, in certain limited respects, the existing law governing the registration of local societies. At the same time the opportunity is taken to state that law, where it remains in substance unchanged, more clearly.

3. The existing law governing the registration of local societies is found in section 6 of the Societies Act. That section is already a very long one, with ten subsections. It is proposed to replace it with six new sections: sections 6, 6A, 6B, 6C, 6D and 6E. Where these proposed new sections merely state, in substance, the existing law they do so, in places, in a more readily understandable fashion.

4. The proposed new section 6 more clearly states the law contained in the existing section 6 (1) and (2). In addition, however, the proposed new section 6 (3) gives the Registrar of Societies the power to require a society applying for registration or for exemption from registration to provide him with all the information he thinks it necessary to have for a proper consideration of the application. Under this new provision the Registrar may defer his decision on the application until the required information is provided.

5. The proposed new section 6A very largely states the law contained in the existing section 6 (3) and 6 (4). However, in addition —

- (a) the proposed new section 6A (1) (a) gives the Registrar the power to refuse to register a local society connected with an organization or group established outside Botswana if that local society has not adopted its own constitution or its own rules, regulations or bye-laws;
- (b) the proposed new section 6A (2) (b) requires the Registrar to refuse to register, and not to exempt from registration, a society which fails within ninety days to give him any information it has been required to provide him under the proposed new section 6 (3) (the effect of which provision is explained in paragraph 4 of this Memorandum);
- (c) the proposed new section 6A (2) (c) requires the Registrar to refuse to register, and not to exempt from registration, a society unless he is satisfied that the membership of the society is properly defined and that there is adequate provision for membership and for the termination and determination of membership of the society and for the control and management of its financial affairs and property; and finally, the proposed new section 6A (2) (d) requires the Registrar to refuse to register, and not to exempt from registration, a society unless he is satisfied that the office-bearers are able to manage the society and to perform their duties under the Act.

6. The proposed new section 6B reproduces, in substance, that part of the existing section 6 (10) which governs appeals to the Minister against the Registrar's refusal to register a society.

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7. The proposed new section 6C reproduces, in substance, the existing section 6 (5).

8. The proposed new section 6D reproduces, in substance, the existing section 6 (6) and (7).

9. The proposed new section 6E replaces the existing section 6 (8) and (9) and that part of the existing section 6 (10) which governs appeals to the Minister against the Registrar's cancellation of a society's registration. This proposed new section considerably alters the machinery whereby the cancellation of a society's registration may be effected.

10. Under the existing law governing the cancellation of a society's registration, registration is first cancelled by the Registrar (after allowing the society to make representations to him against the proposed cancellation). After its registration has been cancelled the society may appeal against the cancellation to the Minister.

11. Under the proposed new section 6E, the Registrar is not able to cancel a society's registration until after there has been an unsuccessful appeal to the Minister against the Registrar's decision to cancel the registration or, where no appeal is made, until after the expiry of the period within which an appeal to the Minister may be made.

12. Thus, pending the Minister's decision on appeal against the Registrar's decision to cancel a society's registration or, if there is no appeal, during the period within which an appeal may be made and thereafter until the society's registration is cancelled by the Registrar, in consequence of any appeal having been dismissed or of there having been no appeal, the society concerned remains, by virtue of the proposed new section, a registered society in fact and not, as at present, by legal fiction alone.

13. In the event of the Minister allowing an appeal against the Registrar's decision to cancel a society's registration, there is no question under the proposed new section 6E, as there is under the existing law, of restoring the society to the register: the society's registration cannot at any stage be cancelled pending the Minister's decision. In short, the appeal machinery must be exhausted before a society's registration is cancelled and its particulars are deleted from the register.

14. The proposed new section 6E (1) (b) includes a new ground on which a society's registration may be cancelled by the Registrar. This new ground is that the society has become one of which the Registrar is not satisfied that its office-bearers are able to manage the society and to perform their duties under the Act.

15. Finally, as regards the proposed new section 6E, section 6E (6) makes provision for the return to the Registrar of a society's certificate of registration in the event of the cancellation of its registration. While the existing law provides for the return of a society's certificate of exemption in the event of the rescission of its exemption from registration (and this is retained by the proposed new section 6D (2)), no provision presently exists for the return to the Registrar of the certificate of registration.

16. The second object of the Bill is to amend the Societies Act in order to close certain gaps in the existing law governing the winding up of illegal

societies. At the same time, as with the existing law governing the registration of societies, the opportunity is taken to state that law, where it remains in substance unchanged, more clearly.

17. The existing law governing the winding up of illegal societies is found in section 21 of the Societies Act. Again, that section is a long one, with seven subsections. It is proposed to replace it with two new sections: sections 21 and 21A. Where these two proposed new sections merely state, in substance, the existing law they do so, in places, in a clearer fashion.

18. The proposed new section 21 more clearly states the law partly contained in the existing section 21 (1) and contained in the existing section 21 (2), (3), (5) (6) and (7).

19. The proposed new section 21A very largely states, in a clearer fashion, the law partly contained in the existing section 21 (1) and contained in the existing section 21 (4). In addition, however, certain gaps in the existing law are closed by this proposed new section.

20. The proposed new section 21A (1) clearly spells out the principles on which the assets of a society are to be applied following a winding up order made by the Minister under the proposed new section.

21. These principles are those found in the provisions of Part IV (2) of the Insolvency Act (Cap. 16:01) governing the application of assets in respect of the costs of sequestration, other preferent claims and secured claims. The existing law is wholly silent as to the order in which the assets of a society are to be applied, following the Minister's winding up order, to satisfy and provide for its debts and liabilities and for the costs of the winding up itself.

22. Finally, the proposed new section 21A (3) provides for the situation where the society being wound up is insolvent (namely, where, after the assets of the society have been applied in accordance with the proposed new section 21A (1), the remaining assets of the society are insufficient to meet its outstanding debts and liabilities). In this situation the new section 21A (3) requires the remaining assets to be applied to meet the society's outstanding debts and liabilities in proportion to the amounts of the same as evidenced in the society's books. The existing law makes no provision for the case where the Minister's winding up order applies to an insolvent society.

P.S. MMUSI,
Minister of Home Affairs.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Substitution of new sections 6, 6A, 6B, 6C, 6D and 6E of Cap. 18:01
3. Amendment of section 9 of principal Act
4. Substitution of new sections 21 and 21A of principal Act

A BILL

entitled

An Act to amend the Societies Act

*Date of Assent:**Date of Commencement:*

ENACTED by the Parliament of Botswana.

Short title
Substitution
of new
sections 6,
6A, 6B, 6C,
6D and 6E of
Cap. 18:01

1. This Act may be cited as the Societies (Amendment) Act, 1978.

2. The Societies Act (hereinafter referred to as "the principal Act" is amended by substituting for section 6 thereof the new sections following —

"Applications for registration or exemption from registration of societies 6. (1) Every local society shall, in the manner prescribed and within twenty-eight days of the formation thereof or of the adoption thereby of a constitution or of rules, regulations or bye-laws, make application to the Registrar for registration or for exemption from registration under this Act.

(2) Subject to sections 6A and 6E (7), —

(a) upon application made by a local society for registration under this Act, the Registrar shall register the society; and

(b) upon application being made by a local society for exemption from registration under this Act, the Registrar shall either grant such exemption with the approval of the Minister or refuse such exemption in which case the Registrar shall treat the application for exemption as an application for registration under this Act and shall register the society.

(3) Before registering or refusing to register or granting or refusing to grant exemption from registration to a local society, the Registrar may require the society to provide him, in writing or otherwise, with such further information as he thinks it necessary to have for a proper consideration of the application for registration or for exemption from registration, as the case may be.

(4) On registering or exempting from registration a local society, the Registrar shall issue to the society a certificate in the prescribed form, which certificate shall be *prima facie* evidence of registration or of exemption from registration of the society, as the case may be.

Powers and
duties of
Registrar
in connexion
with regis-
tration of
societies

6A. (1) The Registrar may refuse to register and shall not exempt from registration a local society where he is satisfied that the society is a branch of or is affiliated to or connected with any organization or group established outside Botswana and that —

(a) the local society has not adopted its own constitution or its own rules, regulations or bye-laws; or

(b) the organization or group established outside Botswana is of a political nature.

(2) The Registrar shall refuse to register and shall not exempt from registration a local society where —

(a) it appears to him that the society has among its objects, is being used for or is likely to pursue or to be used for any unlawful purpose or any purpose prejudicial to or incompatible with peace, welfare or good order in Botswana or that the interests of peace, welfare or good order in Botswana would otherwise be likely to suffer prejudice by reason of the registration of the society;

(b) the society, within ninety days immediately after being required under section 6 (3) to provide him with information, fails to provide him with all the information so required;

(c) he is not satisfied that the constitution or the rules, regulations or bye-laws of the society adequately define the membership of the society and adequately provide for and for the termination and determination of membership and for the control and management of the financial affairs of the society and of its property;

(d) he is not satisfied that the office-bearers of the society are able to undertake the management of the society, including the keeping of proper records of meetings of the society and of its members and the control and management of the financial affairs of the society and of its property, and to perform the duties imposed on them by this Act;

(e) it appears to him that the constitution, rules, regulations or bye-laws of the society are in any respect repugnant to or inconsistent with any written law;

(f) he is satisfied that the application does not comply with this Act;

(g) he is satisfied that the society does not exist; or

- (h) the name under which the society is to be registered or exempted —
 - (i) is identical to that of any other existing local society;
 - (ii) so nearly resembles the name of such other local society as, in the opinion of the Registrar, to be likely to deceive the public or the members of either society; or
 - (iii) is, in the opinion of the Registrar, repugnant to or inconsistent with any written law or otherwise undesirable.

Appeal
against
refusal to
register
society

6B. Any society aggrieved by the refusal of the Registrar to register the society may, within twenty-eight days immediately after the date of such refusal, appeal against the refusal to the Minister; where a society has so appealed, it shall not, notwithstanding section 15, be deemed to be an illegal society pending the decision of the Minister on the appeal.

Register
of societies

6C. (1) The Registrar shall effect registration of a local society by entering in a register kept for the purpose (hereafter in this section referred to as "the register") the particulars given in the application form and the date of such entry.

(2) On application to the Registrar and on payment of the prescribed fee, the register may be searched and examined by any person during the usual office hours.

(3) In any proceedings under this Act, a document purporting to be a copy of an extract from the register and to be certified by the Registrar as a true copy shall be admissible as *prima facie* evidence of the contents of the register and of the truth of what is recorded in the document.

Rescission of
exemption
from regis-
tration

6D. (1) The Registrar may, with the approval of the Minister, rescind at any time any exemption from registration granted to a local society; in which case the society may, within twenty-one days immediately after the date of the receipt of notification of the rescission, apply for registration under this Act and, where the society does so, it shall not, pending a refusal of the application, be deemed to be an illegal society notwithstanding section 15.

(2) Where the Registrar rescinds the exemption of a society under this section, the certificate of exemption issued to the society under section 6 (4) shall be surrendered to the Registrar within twenty-one days immediately after the date of the receipt of notification of the rescission; if the certificate is not so surrendered,

every person who was an office-bearer of the society at the date of the rescission of the society's exemption from registration shall be guilty of an offence and liable to a fine of P50 and to a further fine of P10 for every day, after the expiry of the aforementioned period of twenty-one days, upon which the certificate remains unsurrendered.

Cancellation
of registration

6E. (1) The Registrar may, as hereinafter provided by this section, at any time cancel the registration of a local society if he is satisfied that it is expedient to do so on the ground that —

- (a) the society is or has become a branch of or affiliated to or connected with any organization or group of a political nature established outside Botswana;
- (b) the society has become one which he would, by virtue of section 6A (2) (a), (d) or (e), have been required to refuse to register;
- (c) the society has, in contravention of section 7, changed its objects or pursues objects other than its declared objects; or
- (d) the society has failed to comply with an order made under section 11 or 12 within the time stated in the order.

(2) Where the Registrar is of the opinion that the registration of a local society should be cancelled, he shall notify his opinion in writing to the society and shall specify a period of not less than twenty-one days within which the society may, if it so wishes, submit to him reasons why the society's registration should not be cancelled.

(3) At the expiry of the period specified by the Registrar under subsection (2) and after considering any reasons which may have been submitted to him under that subsection, the Registrar, if he decides to cancel the registration of the society concerned, shall not proceed at once to cancel the registration of the society but shall first notify his decision in writing to the society.

(4) Any society aggrieved by the decision of the Registrar notified to it under subsection (3) may, within twenty-eight days immediately after the date of the receipt of notification of the decision, appeal against the decision to the Minister.

(5) Where no appeal is made to the Minister within the period of twenty-eight days prescribed by subsection (4) or such an appeal is made and dismissed by the

Minister, the Registrar may forthwith cancel the registration of the society and shall notify the society in writing accordingly.

(6) Where the Registrar cancels the registration of a society under this section, the certificate of registration issued to the society under section 6 (4) shall be surrendered to the Registrar within twenty-one days immediately after the date of the receipt of notification of the cancellation; if the certificate is not so surrendered, every person who was an office-bearer of the society at the date of the cancellation of the society's registration shall be guilty of an offence and liable to a fine of P50 and to a further fine of P10 for every day after the expiry of the aforementioned period of twenty-one days, upon which the certificate remains unsurrendered.

(7) A society which has had its registration cancelled on the ground prescribed by subsection (1) (d) or any society which, in the opinion of the Registrar, is the successor of that society shall not be entitled to apply for re-registration or for exemption from registration until the relevant order made under section 11 or 12, as the case may be, has been complied with.”.

Amendment
of section 9
of principal
Act
Substitution
of new
sections 21
and 21A of
principal Act

3. Section 9 (1) of the principal Act is amended by substituting for the words “under section 6”, which appear therein, the words “under this Act”.

4. The principal Act is amended by substituting for section 21 thereof the new sections following —

“Order for winding up affairs of illegal society, effect and suspension thereof

21. (1) The Minister may order that the property, both movable and immovable, of an illegal society or of a society in respect of which a notification has been published in the Gazette under section 10 (2) shall vest in a person specified in the order (hereafter in this section and in section 21A referred to as “the person specified”) and thereupon the person specified shall proceed to wind up the affairs of the society:

Provided that no order made under this subsection shall extend to any property of the society ordered to be forfeited under section 25.

(2) An order made under subsection (1) shall be registered by the public officer concerned with the registration of the title to any immovable property affected by the order without the payment of any registration fee and no stamp duty shall be payable on any such order.

(3) Where it is necessary that any entry be made in or on any book, register, title deed or other document in order to vest any property in the person specified in

pursuance of an order made under subsection (1), the entry shall on production of the order, be made by the person whose duty it is to make the entry, without the payment of any fee or duty in respect thereof.

(4) For the purpose of winding up the affairs of a society in pursuance of an order made under subsection (1), the person specified shall have all the powers vested by the Insolvency Act in the trustee of an insolvent estate for the purpose of the discovering of the property of a debtor and the realization thereof.

Cap. 16:01

(5) The Minister may, for the purpose of enabling a society to wind up its own affairs, suspend the operation of any order made under subsection (1) for such period as may seem expedient to him:

Provided that the Minister shall not suspend the operation of such an order unless he is satisfied that the society in question is solvent.

Application
of assets
of illegal
society
under
winding up
order

21A. (1) Where the affairs of a society are wound up in pursuance of an order made under section 21 (1), the assets of the society shall be applied upon the principles of those provisions of Part IV (2) of the Insolvency Act governing the application of assets in respect of the costs of sequestration, other preferent claims and secured claims.

(2) Where, after the assets of the society have been applied in accordance with subsection (1), the remaining assets of the society (if any) are sufficient to satisfy and provide for the outstanding debts and liabilities of the society, as evidenced by its books, the person specified shall apply the remaining assets to satisfy and provide for those outstanding debts and liabilities as so evidenced.

(3) Where, after the assets of the society have been applied in accordance with subsection (1), the remaining assets of the society (if any) are not sufficient to satisfy and provide for the outstanding debts and liabilities of the society, as evidenced by its books, the person specified shall apply the remaining assets to satisfy and provide for those outstanding debts and liabilities in proportion to the amounts of the same as so evidenced.

(4) Where, after the assets of the society have been applied in accordance with subsections (1) and (2), there are any surplus assets, the person specified shall prepare a draft order directing the manner in which the surplus assets shall be applied and submit the same to the Minister.

(5) The Minister may make an order by dating and signing the draft order submitted to him in accordance

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with subsection (4), whereupon the surplus assets shall be held and applied by the person specified in conformity therewith:

Provided that before making an order under this subsection, the Minister may amend the draft order submitted to him in accordance with subsection (4) in such manner as he may think proper in the circumstances of the case.”.

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