

MEDIA PRACTITIONERS ACT, 2008

No. 29



of 2008

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An Act to establish a Media Council for Botswana for the purpose of preserving the maintenance of high professional standards within the media and to provide for matters related thereto.

Date of Assent: 22.12.2008

Date of Commencement: 31.12.2008

ENACTED by the Parliament of Botswana.

PART I – *Preliminary*

- Short title **1.** This Act may be cited as the Media Practitioners Act, 2008.
- Interpretation **2.** In this Act, unless the context otherwise requires —
- “Appeals Committee” means the Appeals Committee appointed under section 15;
- “chairperson” means the chairperson of the Executive Committee;
- “committee” means a committee appointed by the Council under section 23;
- “Complaints Committee” means the Complaints Committee established under section 11;
- “Council” means the Media Council established under section 3;
- “Executive Committee” means the governing body of the Council elected under section 18 (2);
- “media practitioner” means a person engaged in the writing, editing or transmitting of news and information to the public, and includes a broadcaster under the Broadcasting Act, a journalist, editor or publisher of a publication and the manager or proprietor of a publication or broadcasting station;
- Cap. 72:04

- “member” means a member of the Council but excludes an associate member;
- “notice” includes an instrument made by statutory instrument;
- “publication” includes all print, broadcast and electronic information which is published;
- “published” means issued for distribution, by sale or otherwise; and
- “publisher” means a media institution or a person who is responsible for the production of a publication.

PART II – Establishment and Membership of the Council

- 3.** (1) There shall be a Council, to be known as the Media Council. Establishment of Council
- (2) The Council shall be a body corporate with perpetual succession, capable of suing and being sued in its own name.
- (3) The Council shall have a common seal and may hold, acquire and dispose of any movable or immovable property.
- 4.** The Council shall operate without any political or other bias or interference, and shall be wholly independent and separate from the government, any political party or any other body. Independence of Council
- 5.** The objects of the Council are — Objects of Council
- (a) to preserve media freedom;
 - (b) to uphold standards of professional conduct and promote good ethical standards and discipline among media practitioners;
 - (c) to promote the observance of media ethics in accordance with the Code of Ethics issued by the Council under section 9 (1);
 - (d) to promote public awareness of the rights and responsibilities of media practitioners, through such outreach programmes as may be established;
 - (e) to establish links with similar organisations within and outside Botswana;
 - (f) to monitor the activities of media practitioners;
 - (g) to receive complaints directed against media practitioners;
 - (h) to bring together media practitioners and other media stakeholders in Botswana, with a view to exchanging information, sharing ideas and dealing with any challenges facing the development of the media industry;
 - (i) to register and accredit resident media practitioners;
 - (j) to issue accredited resident media practitioners with identity cards;
 - (k) to maintain a media register;
 - (l) to seek financial and other assistance for the operations of the Council;
 - (m) to sponsor training in media work and advise on matters pertaining to the education and training of media practitioners; and
 - (n) to undertake such research into the performance of the media as may be consistent with the furtherance of the Council’s objectives.

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Registration and accreditation of resident media practitioners
Membership of Council

6. (1) A resident media practitioner shall be registered and accredited by the Executive Committee.

(2) An application for registration and accreditation shall be made in accordance with the regulations made by the Executive Committee.

7. (1) The membership of the Council shall consist of all publishers of news and information, whether or not in the private or public sector.

(2) Subject to the provisions of subsection (1), a publisher of news and information shall apply to the Executive Committee for membership of the Council.

(3) Any person in Botswana having a legitimate interest in the development of the local media industry may apply to the Executive Committee for associate membership.

(4) A member or associate member shall pay to the Council such annual subscription as may be prescribed by the Executive Committee.

(5) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P5,000 or to imprisonment for a term not exceeding three years, or to both.

Tenure and termination of membership

8. (1) A person shall —

(a) be a member or an associate member upon approval of his or her application to the Executive Committee under section 7 (2) and section 7 (3); and

(b) cease to be a member or associate member upon termination of his or her membership.

(2) A person's application for membership and termination of membership of the Council shall be in accordance with regulations made by the Executive Committee.

PART III – *Conduct of Media Practitioners*

Code of Ethics

9. (1) A media practitioner registered under this Act shall be subject to a Code of Ethics issued by the Council.

(2) A media practitioner who contravenes any provision of the Code of Ethics shall be referred to and shall appear before the Complaints Committee.

(3) The Code of Ethics shall include the following —

(a) provisions relating to the duties and obligations of media practitioners;

(b) provisions relating to the protection of minors;

(c) provisions relating to the protection of persons suffering from a physical or mental disability;

(d) provisions relating to advertising content;

(e) provisions allowing for fair competition in the media industry;

(f) provisions relating to the protection of the privacy of individuals, as guaranteed in the Constitution of Botswana; and

(g) provisions relating to the unlawful publication of defamatory matter in accordance with the provisions of the Penal Code.

Cap. 08:01

(4) The chairperson of the Executive Committee shall deposit a copy of any proposed amendments to the Code of Ethics with the Minister, within seven days of the adoption by the Council of such proposed amendments.

10. (1) Without prejudice to anything contained in sections 11 to 14, a publisher who publishes a statement about or against a person shall, when requested to do so by the person in respect of whom the publication is made, publish a reply from him or her. Right to
reply

(2) A reply published by a publisher, after a request is made under subsection (1), shall be published —

- (a) in not later than two subsequent editions of the publication; and
- (b) with the same prominence as the original statement published.

(3) Where a person in respect of whom a publication is made feels aggrieved by an act or omission of a publisher under this section, he or she may lodge a complaint before the Council under section 12.

PART IV – Committees

11. (1) Without prejudice to section 23, the Minister shall appoint a Complaints Committee consisting of — Complaints
Committee

- (a) a chairperson, who shall be a member of the public; and
- (b) eight representatives of the public who —
 - (i) have a serious interest in the furtherance of the communicative value of the media,
 - (ii) do not have a financial interest in the media, and
 - (iii) are not in the employ of the media.

(2) The Complaints Committee shall appoint a secretary who shall be a non-voting *ex-officio* member and shall be responsible for keeping minutes of Complaints Committee meetings and such other documentation as may be required.

(3) The manner of convening meetings of the Complaints Committee and the procedure and voting at such meetings shall be prescribed by the Executive Committee.

12. A person aggrieved by an act or omission of a media practitioner in respect of a publication may lodge a complaint before the Council against the media practitioner. Complaints
may be
lodged with
Council

13. A complaint lodged with the Council under section 12 shall be referred, within 14 days, to the Complaints Committee, which shall make any investigation into the complaint as it considers necessary. Reference to
Complaints
Committee

14. (1) After a complaint is referred to it under section 13, the Complaints Committee shall, in writing and giving full reasons therefor, make any or a combination of the following rulings — Ruling of
Complaints
Committee

- (a) dismiss the complaint;
- (b) record criticism of the conduct of the media practitioner in relation to the complaint, where such criticism is in their view warranted;
- (c) direct that a correction or an apology be published by the offending party in such manner as may be determined by it;
- (d) direct disciplinary action; or
- (e) make supplementary or ancillary rulings as may be considered necessary for putting into effect any previous rulings made in terms of this section.

(2) The disciplinary action which may be directed by the Complaints Committee under subsection (1) (d) shall include any or a combination of the following —

- (a) warning or reprimanding a media practitioner;
- (b) imposing a fine on a media practitioner;
- (c) suspending a media practitioner's registration by the Council for a specified period; or
- (d) removing a media practitioner's name from the register.

(3) The Complaints Committee may consider both documentary and oral evidence provided by the parties and shall make a ruling on the issue as it considers just in the circumstances of the case.

(4) Where a ruling is made by the Complaints Committee under subsection (1), the Complaints Committee may, where it considers it appropriate and with the approval of the Council, publish, in full or otherwise, its findings in respect of the investigations carried out by it under section 13.

Appeals
Committee

15. (1) The Minister shall appoint an Appeals Committee which shall consist of the following members —

- (a) a legal practitioner, admitted to practice in the courts of Botswana and recommended by the Law Society of Botswana, who shall be the chairperson of the Committee;
- (b) a member of the public; and
- (c) a representative of the media recommended by the Council.

(2) A person aggrieved by a ruling made by the Complaints Committee under section 14 (1), may lodge an appeal with the Appeals Committee, in writing, within 14 days of such ruling being made.

(3) An appeal to the Appeals Committee shall be noted by delivering a written notice of an intention to appeal to the secretary of the Complaints Committee, together with a statement setting out the grounds of the appeal.

(4) The Appeals Committee may dismiss, enhance, reduce or vary a decision made by the Complaints Committee.

(5) The manner of convening meetings of the Appeals Committee and the procedure and voting at such meetings shall be prescribed by the Executive Committee.

(6) A person aggrieved by the decision of the Appeals Committee at an inquiry under this Part may, within 30 days of the decision, appeal to the High Court.

(7) The High Court may, on hearing an appeal —

- (a) confirm, vary or set aside any decision of the Appeals Committee; or
- (b) remit the matter to the Appeals Committee for further consideration.

Tenure of
office of
members

16. (1) A member of the Complaints Committee or Appeals Committee shall hold office for a term of three years from the date of his or her appointment and shall be eligible for re-appointment.

(2) A person shall not be a member of the Complaints Committee or Appeals Committee for more than two consecutive terms.

Disqualification,
resignation or
removal

17. (1) A member of the Complaints Committee or Appeals Committee shall not be a member of the National Assembly or a local authority, or an employee or official of any political party or similar organisation.

(2) The office of a member of the Complaints Committee or Appeals Committee shall become vacant if he or she becomes —

- (a) a member of the National Assembly or a local authority;
- (b) an employee or official of any political party or similar organisation; or
- (c) an employee of the media or attains a financial interest in the media.

(3) Where a member of the Complaints Committee or Appeals Committee is unable to perform his or her functions, the Minister shall remove that member from office.

(4) A member of the Complaints Committee or Appeals Committee may resign from office by giving one months' notice, in writing, addressed to the chairperson of the Committee of which he or she is a member, and in the case of the chairperson, the notice shall be addressed to the Minister.

(5) Where a member of the Complaints Committee or Appeals Committee dies, resigns, is removed from office or is unable to perform the functions of his or her office, the Committee of which he or she is a member may co-opt an additional member until such time as a new member is appointed by the Minister.

18. (1) The governing body of the Council shall be the Executive Committee which shall consist of the following members —

- (a) a chairperson, vice-chairperson, treasurer; and
- (b) six additional members.

(2) The Executive Committee shall be elected at an ordinary general meeting or a special general meeting of the Council.

(3) The Executive Committee shall be responsible for the implementation of the objects of the Council under section 5, and shall have all such powers and may perform such duties as it may consider necessary or expedient to do so.

(4) The chief executive appointed under section 24 (1) shall be a non-voting *ex-officio* member of the Executive Committee.

(5) The Executive Committee shall appoint a secretary who shall be a non-voting *ex-officio* member and shall be responsible for keeping minutes of Executive Committee meetings and such other documentation as may be required.

(6) The manner of convening meetings of the Executive Committee and the procedure and voting at such meetings shall be prescribed by the Executive Committee.

19. (1) A member of the Executive Committee shall hold office for a period of three years from the date of his or her appointment.

(2) A member of the Executive Committee may resign from office by giving two weeks' notice, in writing, addressed to the chairperson.

20. (1) A person shall not be a member of the Executive Committee if he or she is a member of the National Assembly or a local authority, or an employee or official of any political party or similar organisation.

(2) The office of a member shall become vacant if he or she becomes —

- (a) a member of the National Assembly or a local authority; or
- (b) an employee or official of any political party or similar organisation.

Executive
Committee of
Council

Tenure of
office of
members of
Executive
Committee

Disqualification
from
Executive
Committee

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Vacation
of office,
resignation
or removal

21. (1) Membership of the Executive Committee shall be automatically terminated —

- (a) upon the death of a member;
- (b) by declaration of a court of competent jurisdiction that a member is insane or of unsound mind or judgment;
- (c) upon a member being convicted of a criminal offence punishable by imprisonment without the option of a fine;
- (d) upon a member becoming a full time employee of the Council; or
- (e) upon a finding by at least three-quarters of the members of the Council present, at a duly convened meeting, that there has been gross impropriety in the conduct of a member, which would include, but not be limited to —
 - (i) failure to disclose an interest,
 - (ii) mismanagement of Council assets,
 - (iii) conduct detrimental to the general purposes and interests of the Council, or
 - (iv) engagement by a member in any trade or pursuit which, in the opinion of the majority of the Executive Committee members, is of such a nature as to bring the name of the Council into disrepute.

(2) Where the chairperson dies, resigns, is removed from office or is unable to perform the functions of his or her office, the vice-chairperson shall act as chairperson until the chairperson is able to perform the functions of office, or until a new chairperson is elected.

(3) Where a member dies, resigns, is removed from office or is unable to perform the functions of his or her office, another person may be appointed to fill the vacancy or to act until the member is able to perform the functions of his or her office or until a new member is appointed, as the case may be:

Provided that the new member appointed is nominated from a similar class of membership as the original member.

(4) Where a person is elected as chairperson or is appointed as a member to fill a vacancy, such person shall hold office for the remainder of the term of the previous chairperson or member and is, subject to this Act, eligible for re-appointment or re-election.

Remuneration
of
committee
members

22. (1) Any allowances payable to the members of the Executive Committee shall be paid from the funds generated by the Council.

(2) There shall be paid to the members of the Complaints Committee and the Appeals Committee, such allowances, from moneys appropriated by the National Assembly for that purpose, as the Minister may, in writing, determine.

Appointment
of other
committees
and
delegation of
powers

23. The Council may appoint such other committees as it may consider necessary, and may delegate to them, any of the Council's functions.

PART V – *Management and Staff of the Council*

24.(1) The Executive Committee shall appoint a full time chief executive to the Council.

Chief executive

(2) The chief executive shall be the administrative head of the Council and shall be under the general supervision and direction of the Council.

(3) The chief executive shall be subject to the directions of the chairperson and shall be responsible for the management and administration of the Council.

(4) The chief executive shall attend all meetings of the Council.

25. (1) The Executive Committee shall appoint such other officers and employees as are reasonably necessary for the effective performance of its functions.

Other staff of the Council

(2) The officers and employees of the Council shall hold office upon the terms and conditions determined by the Executive Committee.

PART VI — *Meetings of the Council*

26. (1) The Executive Committee shall, in each year, convene an ordinary general meeting of the Council.

Ordinary general meetings

(2) The chairperson of the Executive Committee, or in his or her absence the vice-chairperson, shall preside at meetings of the Council, and in the absence of both the chairperson and the vice-chairperson, an Executive Committee member designated by the Executive Committee shall preside at the meeting.

(3) The quorum for an ordinary general meeting of the Council shall be 50 per cent of the total Council membership entitled to vote.

(4) A question before a meeting of the Council shall be determined by a simple majority of votes of members and associate members present and voting, and where there is an equality of votes, the chairperson or the person presiding shall have a casting vote in addition to his or her deliberate vote.

(5) A member or associate member who fails to attend three consecutive ordinary general meetings of the Council without reasonable excuse shall cease to be a member or associate member.

27. (1) The Executive Committee may, at any time it considers necessary, convene a special general meeting of the Council.

Special general meetings

(2) At least 25 per cent of the members and associate members of the Council may, at any time, request a special general meeting by written notice signed by such members and associate members and delivered to the chief executive, specifying the object of the proposed meeting; and the Council shall thereupon hold such special general meeting.

(3) The written notice under subsection (2) shall be delivered by hand or post to the chief executive at least 15 days before the meeting.

(4) The quorum for a special general meeting of the Council shall be two thirds of the members and associate members present and voting at such meeting.

28. The Executive Committee shall cause proper minutes of all Council meetings to be recorded.

Minutes of meetings

PART VII – *Miscellaneous Provisions*

- Competition **29.** (1) In carrying out its functions and exercising its powers under this Act, the Council shall take into account —
- (a) whether the conditions for effective competition exist in the market;
 - (b) whether any act by a publisher is likely to cause the lessening of competition in the market; and
 - (c) whether any act by a publisher is in contravention of the applicable laws relating to competition issues.
- (2) Notwithstanding the provisions of sections 9 (2) and 9 (3) (e), the Council shall, in addition, refer all issues relating to competition which may arise in the course of the discharge of its functions to the appropriate authority established to deal with competition issues.
- Disclosure of interest **30.** (1) A member or associate member who has an interest in a contract proposed to be made with the Council or in a matter for discussion by the Council shall disclose the nature of that interest to the Council and shall, unless the meeting otherwise directs, be disqualified from participating in the deliberations on that contract or matter and from voting on a decision on that contract or matter.
- (2) Where a member or associate member fails to disclose an interest under subsection (1), he or she shall cease to be a member of the Council in accordance with section 8.
- (3) Any deliberations or decisions undertaken by the Council involving a member or associate member who fails to disclose an interest under subsection (1), shall be void.
- Accounts to be kept **31.** (1) The treasurer of the Executive Committee under section 18 (1) (a) shall cause proper accounts of all its funds, property, assets and liabilities of the Council to be kept, and to be audited in every year.
- (2) The audited accounts shall be presented by the Executive Committee to the ordinary general meeting.
- Funds of Council **32.** (1) The funds of the Council shall consist of —
- (a) members' voluntary contributions, bequests, and subscription fees;
 - (b) fees and other monies paid for services rendered by the Council;
 - (c) monies from the rental or sale of any property of the Council; and
 - (d) grants, gifts or donations from lawful organisations or sources.
- (2) The Council shall keep bank accounts in such banks, and in such a manner as it may determine.
- (3) There shall be disbursed from the funds of the Council —
- (a) the salaries and expenses of the staff of the Council;
 - (b) such reasonable travelling and subsistence allowances for members of the Council or members of any committee of the Council when engaged in the business of the Council; and
 - (c) any other expenses incurred by the Council in the discharge of its functions.
- Financial year of Council **33.** The financial year of the Council shall be the period of 12 months commencing on 1st April each year and ending on 31st March of the following year.
- Annual reporting **34.** (1) The Executive Committee shall present to the ordinary general meeting a full report of its activities.

(2) The Executive Committee shall, at the end of each financial year, submit to the Minister an annual report indicating the activities and operations of the Council in respect of that financial year.

35. The Minister may, by order, direct that the Executive Committee be dissolved and that a new Executive Committee be elected, where the Executive Committee fails to submit its annual report, in accordance with section 34 (2).

Role
of Minister

36. (1) In this section, “interim Executive Committee” means the Executive Committee appointed by the Minister, in writing, for the time being, until the Council elects the Executive Committee under section 18 (2).

Transitional
provisions

(2) The interim Executive Committee shall be composed of nine members, who shall be publishers.

(3) A publisher shall apply, in writing, to the interim Executive Committee for membership of the Council.

(4) The interim Executive Committee shall —

- (a) approve or reject an application under subsection (3),
- (b) carry out the functions of the Executive Committee under section 18 (3); and
- (c) continue to operate until the Council elects the Executive Committee under section 18 (2).

37. (1) The Executive Committee may, subject to approval by a special resolution, make regulations providing for any matter which is to be provided for by regulations made by the Executive Committee or which is to be prescribed by the Executive Committee, which shall be binding on all members of the Council, and in addition prescribing all or any of the following matters —

Regulations

- (a) the regulation of powers exercisable by the Council and of committees appointed by the Council;
- (b) the delegation of functions of the Council under section 23;
- (c) the manner of applying for registration and accreditation of resident media practitioners under section 6 (2);
- (d) the manner of convening meetings of the Council and of committees appointed by the Council, voting procedures and other procedures thereof;
- (e) the manner of application for membership of the Council and termination of such membership; and
- (f) such other matters as may be deemed by the Council to be necessary for the promotion of the functions and the regulation of the affairs of the Council.

(2) For the purposes of this section, “special resolution” means a resolution passed by not less than two-thirds of members and associate members of the Council as may be present and voting thereon at a general meeting of the Council duly convened with notice of the intention to propose such resolution.

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Regulations to
be made by the
Minister

- 38.** The Minister may, by statutory instrument, make regulations —
- (a) directing that the Executive Committee be dissolved and that the Council elects a new Executive Committee, in accordance with section 35;
 - (b) relating to any other matter intended to safeguard the interests of the public and promote professional standards in the media;
 - (c) giving effect to the Code of Ethics issued by the Council;
 - (d) relating to the registration and accreditation of non-resident media practitioners; and
 - (e) prescribing anything to be prescribed by the Minister under this Act.

PASSED by the National Assembly this 11th day of December, 2008.

E.S. MPOFU,
Clerk of the National Assembly.