

Bill No. 31 of 2025

CINEMATOGRAPH BILL, 2025
(Published on 14th November, 2025)

MEMORANDUM

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

2. The object of the Bill is to repeal and re-enact the Cinematograph Act (Cap. 60:02) to, amongst other things, cater for —

- (a) establishment of a Film Commission, which shall be a body corporate capable of suing and being sued, and performing such acts as body corporates may by law, perform;
- (b) establishment of a Board of the Commission, powers and functions, tenure, removal from office, the remuneration and allowances of the members, the election of the members, meeting of the Board, quorum, and disclosure of interest, confidentiality and the committees of the Board;
- (c) the appointment of the staff of the Commission, including the Chief Executive Officer and the Secretary and appointment of other staff; and
- (d) the financial provisions of the Commission.

3. Part I provides for the short title and interpretation of terms.

4. Part II provides for the establishment of the Film Commission and, amongst others, its objectives, functions and the seal of the Commission. It also provides for the Board of the Commission, powers and functions, tenure, removal from office and the remuneration and allowances of the Board.

5. Part III provides for meetings and proceedings of the Board, including, the election of the members, meetings of the Board, quorum, and disclosure of interest, confidentiality and the committees of the Board.

6. Part IV provides for the staff of the Commission, including the Chief Executive Officer, the Secretary and the appointment of other staff.

8. Part V provides for the requirements for the making of films, the application for permits, issuance of permits and for power of exemption, amongst others.

9. Part VI provides for the application for a certificate of approval, the issuance of a certificate of approval, the exhibitions of films, restrictions on exhibitions, and restrictions on the display of advertising material.

10. Part VII provides for the licensing of cinemas, including, the application for a licence, the issue, refusal, suspension of a licence, the licensing of a cinema for other entertainment and the power to exempt.

11. Part VIII provides for the financial provisions relating to the Commission.

12. Part IX provides for the establishment of an appeals Board, setting out powers, functions, tenure, removal from office and allowances of the Board.

13. Part X provides for offences and penalties, protection from personal liability, complaints and appeals. It also provides for Regulations, repealing clause and the savings and transitional provisions.

JACOB KELEBENG,
Minister of Sport and Arts.

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B.710

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A Bill

– entitled –

An Act to provide for the making and exhibition of cinematograph films, for the licensing of cinemas and for purposes incidental thereto and connected therewith.

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Cinematograph Act, 2025, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

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

“admitted” means to allow entry whether on payment or gratuitously;

“audio-visual” means any work, content, material, or production that has audio or visual images;

“Board” means the Board of the Commission established under section 7 (1);

“certificate of approval” means a certificate issued by the Commission under section 31;

“cinema” means any building, premises or place at which films are publicly exhibited;

“Commission” means the Film Commission established under section 3;

“exhibit” means to give or make, or cause or permit to be given or made, or take part or assist in the giving or making of any exhibition;

“exhibition” means the projection of a film or other optical effect by means of a cinematography or similar apparatus;

“film” means audio-visual content created for commercial, promotional, or documentary purpose, including a motion picture, analogue and digital cinematography film, and includes any commentary, whether spoken or whether the person speaking appears in the film or not, and any music or sound effect, associated with the film;

“making of a film” means the act of filming, photographing, performing in a scene or episode for the purpose of the production of a film;

- “member” means a member of the Board appointed under section 7 (2);
- “partnership” means the pairing of resources for production of a film, as commissioned by client and includes treaties, co-production and co-financing; and
- “public exhibition” means a public performance to which the public is admitted, whether on payment or gratuitously.

PART II — *Establishment of Film Commission*

- 3. (1) There is hereby established a Commission to be known as the Botswana Film Commission. Establishment of Commission
- (2) The Commission shall be a body corporate capable of suing and being sued and subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.
- 4. The Commission shall — Objectives of Commission
 - (a) develop, promote and market Botswana as a destination for film production;
 - (b) facilitate investment in the film and video industry; and
 - (c) facilitate fair and equitable distribution and access to the creative infrastructure and distribution of skills resources in the film and video industry.
- (2) Notwithstanding the generality of subsection (1), the Commission shall regulate the making and exhibition of cinematograph films.
- 5. (1) The Commission shall be responsible for the regulation of the film and television industry. Functions of Commission
- (2) Without prejudice to the generality of subsection (1), the Commission shall —
 - (a) facilitate growth and development of the film sector;
 - (b) advise the Minister on matters relating to the film industry;
 - (c) regulate the film and video industry, including the licensing of cinemas, film production, online streaming platforms, distributors, exhibitors and registering film agents;
 - (d) hear complaints and appeals from the public regarding film and television material produced, distributed and exhibited in Botswana;
 - (e) in collaboration with Botswana Tourism Organisation established under the Botswana Tourism Organisation Act, promote Botswana as a filming destination of choice; Cap. 42:10
 - (f) set filming standards and develop a code of ethics for the audio-visual industry;
 - (g) identify revenue streams in the audio-visual industry;
 - (h) implement content rating regulations;
 - (i) monitor compliance with this Act; and
 - (j) regulate the making, exhibition and distribution and of audio-visual material.

B.712

(3) For the purpose of performing its functions under this Act, the Commission may carry out the following —

- (a) issue operational and inspection manuals, guidelines or procedures of performance to be utilised by all authorised officers on audio-visual matters;
- (b) seek and collect information from licensees, under this Act; or
- (c) develop framework for mutual recognition with foreign film authorities.

Seal of
Commission

6. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Chief Executive Officer.

(2) The affixing of the seal shall be authenticated by the Chief Executive Officer or any other person authorised in that regard 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, is not required to be under a seal, may be entered into or executed without a seal on behalf of the Commission by the Chief Executive Officer or any other person authorised by the Board to do so.

Board of
Commission

7. (1) There shall be a Board of the Commission, which shall be the governing body of the Commission.

(2) The Board shall consist of seven members appointed by the Minister, of whom at least one-third shall be women.

(3) The Board shall be constituted as follows —

- (a) one representative from the Ministry responsible for Arts;
- (b) a human resource expert;
- (c) an accountant; and
- (d) three members from the public and private sector who have the skills, experience and competencies relevant to the development of the audio-visual industry.

(4) The Chief Executive Officer shall be an *ex-officio* member of the Board.

(5) The Minister shall appoint the Chairperson of the Board and the Vice-Chairperson shall be elected by members from amongst their number.

(6) The Minister shall within 30 days of appointments made under this section, by notice in the *Gazette* publish the appointment of members, their dates of appointment and the period for which they are appointed to the Board.

Powers and
functions of
Board

8. (1) The Board shall —

- (a) provide corporate governance of the Commission including to supervise and control the administration and financial management of the Commission;
- (b) determine the overall policy and strategy of the Commission; and
- (c) ensure the implementation of the objectives of the Commission.

(2) Without prejudice to the generality of subsection (1), the Board shall —

- (a) advise the Minister on any matter related to the Commission's mandate;
- (b) be responsible for taking expert advice and consulting widely to ensure that its decisions are based on the best scientific and technical advice available;
- (c) recommend measures on the prevention of and protection against commercial fraud in the audio-visual industry;
- (d) recommend safety measures in relation to production, distribution and exhibition sites;
- (e) recommend safety measures in relation to film production and set guidelines;
- (f) adopt guidelines to the Commission for purposes of this Act;
- (g) adopt before 31st March of each year for publication, the general report on the Commission's activities, statistics and any other information pertaining to the film industry;
- (h) appoint advisory and technical bodies to assist in all matters concerning the audio-visual industry;
- (i) ensure that the Commission carries out its functions in accordance with the provisions of this Act; and
- (j) adopt before 1st April of each year, the Commission's programme of work.

9. The Minister may, after consultation with the Board, give the Board directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall be consistent with the provisions of this Act or with the contractual or other obligations of the Commission, and the Board shall give effect to such directions.

Directions by
Minister

10. (1) The Chairperson and the Vice-Chairperson shall hold office for a period not exceeding five years, and shall be eligible for re-appointment for a further term not exceeding five years:

Tenure of
office of
members

Provided that, in appointing members to the Board, the Minister shall specify such periods of appointment as to ensure that the appointment of not more than one third of the members expire in one year.

(2) The other members of the Board shall hold office for a period not exceeding three years and may be considered for re-appointment for a further term not exceeding three years.

11. (1) A person shall not qualify for appointment as a member or continue to hold office if he or she —

- (a) has, in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged or rehabilitated, or

Disqualification,
removal and
suspension of
members

- (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;
 - (b) has, within a period of 10 years immediately preceding the date of his or her appointment, been convicted of a criminal offence —
 - (i) within Botswana, or
 - (ii) outside Botswana, which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without an option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon;
 - (c) is at the time of appointment, a member of the National Assembly, a councilor or a member of *Ntlo ya Dikgosi*; or
 - (d) has, within a period of 10 years immediately preceding the date of his or her appointment, been disqualified or suspended by a competent authority from practising a profession on the grounds of misconduct or negligence.
- (2) The Minister may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties under this Act or be entitled to any remuneration or allowances as a member.
- (3) The Minister shall remove a member from office, if the member —
- (a) becomes subject to a disqualification under subsection (1);
 - (b) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;
 - (c) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical practitioner has issued a certificate to that effect;
 - (d) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board; or
 - (e) has been convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.
- (4) For the purposes of subsection 3 (d), “misconduct” includes any act done by a member without reasonable excuse, which —
- (a) amounts to failure to perform in a proper manner, any duty imposed on him or her;
 - (b) is prejudicial to the efficient carrying out of the general functions of the Board; or
 - (c) brings the Board into disrepute.
- (5) A member may resign from the Board by giving 30 days’ notice of his or her intention to resign from office, in writing, to the Minister.

12. A member shall vacate his or her office and his or her office shall become vacant –

Vacation of office by members

- (a) if he or she becomes disqualified in terms of section 11, to hold office as a member of the Board;
- (b) upon his or her death;
- (c) upon the expiry of such time as the Minister may specify, in writing, notifying the member of his or her removal from office;
- (d) upon the expiry of 30 days' notice, in writing, to the Minister, of his or her intention to resign from office;
- (e) if he or she becomes mentally or physically incapable of performing his or her duties efficiently, and a medical practitioner has issued a certificate to that effect;
- (f) if he or she is convicted of an offence under this Act or any other law for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine; or
- (g) if he or she is summarily dismissed by the Minister on the grounds of contravening the provisions of this Act.

13. Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister shall appoint another person in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

Filling of vacancy in Board

14. A member shall be paid such remuneration, travelling expenses and other expenses and allowances incurred in connection with his or her services on the Board, if any, as the Minister may determine.

Remuneration and allowances of members

PART III — Meetings and Proceedings of Board

15. (1) At the first meeting of the Board, the members shall elect from among their number, a Vice-Chairperson.

Election of Vice-Chairperson

(2) On the expiry of the term of office of the Vice-Chairperson or where the Vice-Chairperson vacates office, a new Vice-Chairperson shall be elected by the members from among their number at the next meeting of the Board or as soon thereafter as may be convenient.

(3) The Vice-Chairperson may vacate his or her office as such and he or she remains a member of the Board.

(4) The Vice-Chairperson shall exercise the functions of the Chairperson during the period that the Chairperson is absent or is unable to act as Chairperson.

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

Meetings of Board

(2) The Board shall hold its first meeting on such a date and at such a place as the Minister may fix and thereafter the Board shall hold meetings at least once in every three months, and other meetings as are necessary for the efficient performance and exercise of its functions.

B.716

(3) Upon giving notice in writing, of not less than 14 days, a meeting of the Board may be called by the Chairperson, and where the urgency of a matter does not permit the giving of such notice, a special meeting may be called upon the giving of a shorter notice.

(4) The notice referred to under subsection (3) shall state —

(a) the place and time of the meeting; and

(b) the agenda for the meeting.

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

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

Quorum and
procedure at
meetings

17. (1) The quorum at any meeting of the Board shall be a simple majority of the members.

(2) 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 member presiding shall have a casting vote in addition to that member's deliberative vote.

(3) A decision of the Board shall not be rendered invalid by reason of a vacancy on the Board or the fact that a person who was not entitled to sit as a member did so sit.

(4) The proceedings of each meeting of the Board shall be recorded and confirmed at a subsequent meeting of the Board.

(5) 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.

Disclosure of
interest

18. (1) If a member is present at a meeting of the Board or Committee at which any matter in which the member or immediate member of the family of the member is directly or indirectly interested in a private capacity is the subject for consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board or Committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching on the matter.

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

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision of the Board or Committee is made benefitting such member, or an immediate member of the family of the member, such decision shall be null and void to the extent that it benefits such member or family member.

(4) A member who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding one month, or to both.

19. (1) A member shall observe and preserve the confidentiality of all matters coming before the Board or Committee and such confidentiality shall subsist even after the termination of his or her term of office. Confidentiality

(2) Any person to whom confidential information is revealed through working with the Board or Committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) 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 one month, or to both.

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

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

(3) The Board shall appoint a Chairperson and Vice-Chairperson for any of its committees from amongst its members.

(4) Subject to the specific or general directions of the Board, a committee may regulate its own procedure and the Board may attach any conditions to the delegation of any of its powers to such committees.

(5) The Board may confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no confirmation, variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

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

(7) The provisions of sections 19 and 20 shall, with necessary modifications, apply to a member of the committee.

PART IV — *Staff of Commission*

21. (1) There shall be a Chief Executive Officer for the Commission, who shall be appointed by the Minister, in consultation with the Board, and on such terms and conditions as may be specified in the instrument of appointment. Appointment of Chief Executive Officer

(2) The Chief Executive Officer shall be responsible to the Board.

(3) The Chief Executive Officer shall not, while in the employment of the Commission, engage in paid employment outside the duties of his or her office in the Commission.

(4) The Chief Executive Officer shall hold office for a maximum period of five years on such terms and conditions as may be specified in the instrument of appointment, and may be considered for re-appointment for a further term not exceeding five years.

B.718

(5) The Chief Executive Officer shall, subject to the directions of the Board on matters of policy, be responsible for —

- (a) day to day management of the affairs of the Commission;
- (b) drawing up of proposal for the Commission's work programmes in consultation with the Board;
- (c) implementing the work programmes and the decisions adopted by the Board;
- (d) ensuring the provision of appropriate technical and administrative support for committees;
- (e) ensuring that the Commission carries out its tasks in accordance with the requirements of this Act, in particular with regard to the adequacy of the services provided and the time taken; and
- (f) carrying out any duty that may be conferred on him or her by the Minister or the Board.

(6) The Chief Executive Officer shall, in the performance of his or her duties, keep the Board fully informed of the affairs of the Commission and shall consult the Board from time to time, as may be necessary.

(7) The Chief Executive Officer may delegate to the Secretary, any senior staff or any member of staff of the Commission, as he or she considers appropriate, the exercise of any powers which he or she is authorised to exercise under this Act.

Secretary of Board

22. (1) The Board shall appoint a Secretary, who shall be suitably qualified and experienced.

(2) The Secretary of the Board shall attend meetings of the Board but shall have no right to vote, and shall —

- (a) advise the Board on all legal and procedural issues in respect of its deliberations and decisions;
- (b) be responsible for the accurate and complete recording of the Board's proceedings and decisions;
- (c) be responsible for all legal business of the Board and institutional linkages and representation of the Board;
- (d) be the liaison officer between the Board and the independent Committees; and
- (e) represent the Board and its Committees in all legal proceedings with regard to its activities.

(3) The Secretary of the Board shall be accountable to the Board for his or her functions and responsibilities, and shall report directly to the Chief Executive Officer.

(4) The Secretary of the Board may attend the meetings of any of the Board's Committees, to observe and record its proceedings and decisions, and recommend thereafter to the Board, on legal or procedural grounds, any action to correct or improve the operational modality of the entity in question or to reverse its decision or suspend its operations.

Appointment of staff

23. (1) The Board shall, on the recommendation of the Chief Executive Officer, appoint the executive staff of the Commission.

(2) The Chief Executive Officer may appoint such other staff as may be necessary for the proper discharge of the functions of the Commission.

(3) The terms and conditions of employment of staff of the Commission shall be determined by the Chief Executive Officer, in consultation with the Board.

PART V — *Making of Films*

24. (1) A person who wishes to produce a film within Botswana for public exhibition or sale shall make an application to the Commission in such form as may be prescribed, which application shall be accompanied by —

Application
for film permit

- (a) such particulars as may be prescribed; and
- (b) a prescribed non-refundable application fee.

(2) The Commission shall, in consideration of an application made under subsection (1), give preference to citizens or businesses in partnership with citizens.

(3) A producer, who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding two years, or both.

25. (1) The Commission may, on receipt of an application under section 24 (1), issue a film permit with such conditions as it deems fit if satisfied that the applicant has fulfilled all the requirements under this Act.

Issuance of
film permit

(2) The Commission may, before issuing a film permit, require the applicant to enter into a bond, with or without sureties in a sum not exceeding P5 000 000 to ensure that the film is made in accordance with the —

- (a) conditions if any, contained in the filming permit; and
- (b) description, text and other information supplied to the Commission, with any alterations for which permission has been granted under section 28.

26. (1) The Commission may refuse an application under section 24 (1), if the application does not meet the requirements set out in this Act.

Refusal of film
permit

(2) Where an application for a film permit is refused, the —

- (a) Commission shall, within 10 days, notify the applicant, in writing, stating the reasons for refusal; and
- (b) applicant may re-apply for licensing with the condition that a new application fee shall be payable.

27. (1) The Commission may at any time suspend or revoke a film permit where the Commission has ascertained that —

Suspension or
revocation of
licence

- (a) the permit holder has not complied with conditions of the permit;
- (b) the safety of persons involved in filming is not adequately provided for; or
- (c) it is in the public interest to suspend or revoke the film permit on grounds of public health or public safety.

B.720

(2) The Commission, shall where it decides to suspend or revoke a film permit —

(a) give 30 days' notice of such suspension or revocation, in writing, to the permit holder, which notice shall —

- (i) state the reasons for such suspension or revocation, and
- (ii) inform the permit holder of the right to make a written representation within a specified period, which shall not be more than 21 days; and

(b) take into account any representation made by the permit holder in terms of subparagraph (a) (ii).

(3) Notwithstanding the provisions of subsection (2), the Commission may take immediate action to suspend or revoke a film permit where the risk to public health or public safety requires immediate action.

Alterations to films

28. (1) A holder of a film permit shall, where he or she wishes to make any alterations to the text, synopsis or scenes or any part of a film for which he or she holds a film permit, apply in writing to the Commission for permission to make the alteration.

(2) An application under subsection (1) shall be accompanied by the film permit and particulars of the proposed alterations.

(3) The decision of the Commission shall be endorsed on the film permit, and if permission is approved there shall also be endorsed any conditions attached to the approval.

Power to appoint persons during making of film

29. (1) The Commission may authorise an officer who shall be present at the making of the film, and such authorised officer may, having regard to any special or general directions given to him or her by the Commission, intervene and order the cessation of the making of any scene which in his or her opinion —

- (a) endangers the safety of any person or property;
- (b) is cruel or causes unnecessary suffering to an animal; or
- (c) is being made in contravention of this Act or any of the conditions contained in the filming permit.

(2) An authorised officer under subsection (1) shall, where he or she intervenes in the making of a film, notify the Commission of such intervention and of the reasons thereof, and the Commission may decide to either —

- (a) permit the making of the film to be resumed; or
- (b) having given the permit holder an opportunity to be heard, —
 - (i) permit the making of the film to be resumed on such conditions as the Commission may deem necessary, or
 - (ii) order that the making of the film shall not be resumed.

(3) Any person who —

- (a) obstructs or hinders any person in the exercise of his or her duties under this section or who continues to film after an order has been given to cease under subsection (1), and before the Commission has made its decision under subsection (2); or

(b) contravenes any conditions under subsection (2) (b) (i), commits an offence.

(4) The producer or holder of a film permit who, after an intervention under subsection (1), resumes the making of a film without the permission of the Commission or in contravention of subsection (2) (b) (i) commits an offence.

30. The Minister may, by notice published in the *Gazette*, exempt from the provisions of this Part, any film generally or any persons or class of persons making such film.

Power to exempt from Part V provisions

PART VI — *Exhibition of Films*

31. (1) An application for a certificate of approval to exhibit films shall be made to the Commission in such form as may be prescribed and shall be accompanied by a prescribed non-refundable application fee and —

Application for certificate of approval

(a) a synopsis of the film to which the application relates and such other particulars and descriptions as may be prescribed by the Minister; or

(b) a copy of every advertising material intended to be publicly displayed in connection with the film or its exhibition and, where the Board so directs, a full description thereof and of the visual and verbal contents thereof.

(2) The Commission may require an applicant under subsection (1) to submit the film to which the application relates, for inspection at such time and place as the Board may deem necessary:

Provided that the inspection is conducted in accordance with prescribed standards.

(3) The Commission may, after receipt of an application under section (1), direct that only a description of the advertising material need be furnished.

(4) An authorised person may, if he or she considers that any advertising material under this section contravenes this Act, require any person who displays or causes or permits the displaying of advertising material, to remove it or to obliterate a specified part thereof.

(5) For purposes of this section an “authorised person” means a person who is authorised in writing by the Board for the purposes of this Part.

32. (1) The Commission may, where it is satisfied that an application made under section 31 meets the requirements of a certificate of approval for exhibition —

Issuance of certificate of approval

(a) approve the certificate of approval for exhibition to the public; or

(b) approve the certificate of approval for exhibition to the public subject to such conditions as it deems necessary.

- (2) Where the Commission has approved a film for exhibition under –
- (a) subsection (1) (a), the Commission shall issue a certificate of approval for exhibition; or
 - (b) subsection (1) (b), the Commission shall issue a certificate of approval subject to the conditions as it deems necessary.
- (3) The Commission may, where it is satisfied that an application meets the requirements of a certificate of approval for the display of advertising material –
- (a) approve the certificate of approval for public display; or
 - (b) approve the certificate of approval for public display subject to such alteration as it deems necessary.
- (4) The decision of the Commission under subsection (1) shall be stated on all advertisements and on all posters of the film.
- (5) Where the Commission approves a film under subsection (1) (b), the Commission may make excisions as it deems necessary and retain in its possession, the excised parts.
- (6) The Commission shall not approve any film or advertising material if such film or advertising material represents in an offensive manner –
- (a) the impersonation of the President; and
 - (b) scenes –
 - (i) holding up to ridicule or contempt the Botswana Police Service or any member thereof,
 - (ii) tending to disparage public characters,
 - (iii) made to affect the religious convictions of any section of the public,
 - (iv) tending to disparage persons on the grounds of race, tribe, place of origin, political opinion, colour, creed or sex, or
 - (vii) prejudicial to the good peace and order of Botswana.
- (7) Any person who –
- (a) exhibits such film with parts which the Commission has directed to be excised or altered; or
 - (b) displays in a public place, or as to be visible from a public place, such advertising material with parts which the Commission directed to be removed or altered, commits an offence.
- (8) Any alteration made to a film, after the film has been approved by the Commission, shall be deemed for purposes of this Act, to be a film in respect of which a certificate of approval has not been issued.

Restrictions
on exhibitions

33. (1) A person who wishes to exhibit any film at an exhibition to which the public are admitted, shall make an application to the Commission for a certificate of approval, approving it for such an exhibition, which application shall be accompanied by a prescribed non-refundable application fee.

(2) Where the Commission is of the opinion that a film or any class of films shall not be exhibited, the Commission may, by notice published in the *Gazette* declare that such film or class of films shall not be exhibited.

(3) Any person who contravenes the provisions of subsection (1) or (2) commits an offence.

34. (1) A person who wishes to display advertising material relating to a film in a public place, or so as to be visible from a public place, shall make an application to the Commission for a certificate of approval.

Restrictions on display of advertising material

(2) Any person who contravenes subsection (1) commits an offence.

PART VII — *Licensing of Cinemas*

35. (1) Any person who wishes to operate a cinema shall make an application to the Commission in such form as may be prescribed, which application shall be accompanied by —

Application for licence

- (a) such particulars as may be prescribed; and
- (b) a prescribed non-refundable application fee.

(2) The Commission shall issue a cinema licence on receipt of an application made under subsection (1) and any other licence as determined by the Commission for the purposes of this Part.

(3) Any person who uses, causes or permits to be used, any premises for the public exhibition of any film without a valid cinema licence issued in respect of the premises, commits an offence.

36. (1) The Commission shall issue a licence, for a period not exceeding 12 months to an applicant in such form as may prescribed, where the Commission is satisfied that the applicant has complied with the requirements set out under this Act.

Issuance of licence

(2) A licence issued under subsection (1) may be granted subject to such terms and conditions as the Commission deems necessary.

(3) An officer of the Commission or person so designated may order an exhibition to cease or to give any other direction which he or she may deem necessary for ensuring the safety of the cinema and of the audience.

(4) An officer of the Commission or person so designated shall, immediately after giving an order under subsection (3), notify the Commission of such order.

(5) A licensee or a manager of a cinema or other person responsible for the exhibition of any film who fails to comply with an order under subsection (3) commits an offence.

37. (1) The Commission may refuse an application for the operation of a cinema, if the application does not meet the requirements set out in this Act.

Refusal of licence

(2) Where an application for licensing is refused, the —

- (a) Commission shall, within 10 days, notify the applicant, in writing, stating the reasons for refusal; and
- (b) applicant may re-apply for licensing with the condition that a new application fee shall be payable.

38. (1) The Commission may at any time suspend or revoke a licence where the Commission has ascertained that —

Suspension or revocation of licence

B.724

Licensing
of cinema
for other
entertainment

Power to
exempt from
Part VII
provisions
Inspection of
premises

- (a) the licensee has not complied with conditions of the licence;
 - (b) the safety of persons attending the exhibition is not adequately provided for; or
 - (c) it is in the public interest to suspend or revoke the licence on grounds of public health or public safety.
- (2) The Commission, shall where it decides to suspend or revoke a licence —
- (a) give 30 days' notice of such suspension or revocation, in writing, to the licensee, which notice shall —
 - (i) state the reasons for such suspension or revocation, and
 - (ii) inform the licensee of the right to make a written representation within a specified period, which shall not be more than 21 days; and
 - (b) take into account any representation made by the licensee in terms of subparagraph (a) (ii).
- (3) Notwithstanding the provisions of subsection (2), the Commission may take immediate action to suspend or revoke a cinema licence where the risk to public health or public safety requires immediate action.

39. The Commission shall, on receipt of an application of any person, issue or endorse a cinema licence for other entertainment under this Act, —

- (a) authorising the use of the cinema for the performance or presentation of any stage play; or
- (b) for public entertainment; in addition to the presentation of cinematography exhibitions, where the Commission is satisfied that the cinema conforms with all the requirements prescribed for theatres or for public entertainment by any other written law.

40. Notwithstanding the provisions of this Part, the Minister may, by notice published in the *Gazette*, exempt any premises from the provisions of this Part.

41. (1) The Commission may authorise an officer to enter and inspect the premises of a licensee.

(2) The officer authorised under subsection (1) shall, before inspecting any premises, give a licensee or the person in charge of the premises seven days written notice of the intended inspection and grounds for inspecting the premises.

(3) An officer authorised under subsection (1) shall, when entering the premises, cinema or exhibition, provide proof of authority to inspect the premises by handing an identification card issued by the Commission to the licensee or the person in control of the premises, cinema or exhibition.

(4) An officer authorised under subsection (1) may, where there are reasonable grounds to believe there is contravention of this Act, enter and inspect the premises of a licensee without notice.

- 42.** An authorised officer under section 41 who —
- (a) discloses to a third party any information acquired in the performance of his or her inspection duties unless otherwise ordered to do so in writing by the Commission or by a court of law;
 - (b) fails to execute his or her duties in accordance with this Act, without reasonable excuse; or
 - (c) fails to disclose financial interest in a trade, business or activity in connection with an inspection he or she carries out, commits an offence.

Offences
relating to
inspection

PART VIII — *Financial Provisions*

- 43.** (1) The funds of the Commission shall consist of —
- (a) monies appropriated by the National Assembly for the purposes of the Commission;
 - (b) any monies accruing to the Commission from the performance of its functions under this Act including fees, charges and levies for services provided to all beneficiaries;
 - (c) grants or donations received by the Commission;
 - (d) monies borrowed with the approval of the Minister responsible for finance; and
 - (e) income that the Commission may receive from investments, rentals, sales of land and buildings.
- (2) The Commission shall use the funds acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus funds in such a manner as the Minister may direct.
- (3) The Commission may, subject to the approval of the Minister, invest in such manner as it sees fit, such of its funds as are not immediately required for the performance of its functions.
- (4) The Commission shall manage its own budget through a subvention or grant from Government until such time that the Commission is able to source its own funding.
- (5) The Minister shall establish a Fund to be known as the Film and Video Development Fund.

Funds of
Commission

44. The Commission shall provide to the Minister such information concerning the operations, plans and financial accounts of the Commission as the Minister may, from time to time, consider necessary.

Provision of
information

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

Financial year

- 46.** (1) The Commission shall —
- (a) keep and maintain proper books of accounts and statement of accounts in respect of every financial year on the assets, liabilities, income and expenditure of the Commission; and

Accounts and
audit

B.726

- Cap. 46:10
- (b) submit its books of accounts to an independent auditor registered under the Financial Reporting Act appointed by the Board, who shall audit the accounts of the Commission within two months of the end of the financial year or such time as may be extended by the Minister responsible for finance.
- (2) The auditor shall report in respect of the accounts of each financial year, in addition to any other matter on which the auditor considers it pertinent to comment on, whether or not —
- (a) the auditor has received all the information, to the best of the auditor's knowledge and belief, necessary for the performance of the auditor's duties;
 - (b) the accounts and records of the Commission have been properly kept;
 - (c) the Commission has complied with all financial provisions of this Act prescribed for the Commission; and
 - (d) the statement of accounts prepared by the Commission 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 Commission.
- (3) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion, be forwarded to the Commission by the auditor.
- Annual report
- 47.** (1) The Commission shall, within one month of receipt of the audited accounts, submit to the Minister, a comprehensive report on the operations of the Commission during such year, together with the auditor's report and audited accounts as provided for in section 46.
- (2) The Minister shall, within 30 days of his or her receiving the Commission's audited accounts referred to under subsection (1), lay the auditor's accounts and report before the National Assembly.
- (3) The Commission shall cause the annual report to be published and made available for sale to members of the public for a prescribed fee.
- Annual plan
- 48.** The Commission shall submit to the Minister for approval, at least three months prior to the commencement of each financial year, an annual plan for the Commission, which shall include —
- (a) a budget for that financial year;
 - (b) the goals of the Commission for the forthcoming year;
 - (c) the proposed activities of the Commission for the forthcoming year;
 - (d) any report required by the Minister; and
 - (e) any other matter which the Commission deems necessary.
- (2) The Commission shall ensure that, so far as is possible, the —
- (a) income derived from the sources set out in section 43 meets the expenditure to be incurred in carrying out the duties and obligations of the Commission; and

- (b) affairs of the Commission shall be conducted in an efficient and cost-effective manner, with a view to minimise unnecessary expenditure, whilst achieving its regulatory responsibilities under this Act.

49. (1) The Commission may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.

Pension and other funds

(2) The Commission may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

PART IX — Appeals

50. (1) A person aggrieved by the action or decision of the Commission or authorised officer shall appeal to the Appeals Board, in writing within 14 days of the action or decision.

Appeals Board

(2) The Minister shall appoint an Appeals Board on an ad hoc basis which shall consist of the following members —

- (a) a legal practitioner, admitted to practice in the courts of Botswana;
- (b) one person at the rank of a Director from the department responsible for —
 - (i) Arts,
 - (ii) Trade,
 - (iii) Entrepreneurship, and
 - (iv) Tourism;
- (c) a person from the film and video industry; and
- (d) any other person who, in the opinion of the Minister, has expertise in matters related to.

(3) The Minister shall appoint a Chairperson of the Appeals Board from amongst the members of the Appeals Board.

(4) The Minister shall, by Notice in the *Gazette*, publish the appointment of members.

51. (1) The Appeals Board shall —

Functions of Appeals Board

- (a) consider appeals lodged by any person against any action or decision taken by the Commission in terms of this Act;
 - (b) advise the Commission on matters that relate to the film and video industry that are referred to it; and
 - (c) consider matters relating to the film and video industry referred to it by the Minister.
- (2) The Appeals Board may —
- (a) confirm, set aside or vary a decision contemplated in subsection (1) (a);

B.728

- (b) substitute any other decision for that decision; or
- (c) provide the required advice.
- (4) The Appeals Board may, for the purposes of subsection (1) —
 - (a) summon, in a Form prescribed by the Minister, any person who in the Appeals Board's opinion may be able to give information, or who it believes has in his or her possession or custody or under his or her control, any document which has any bearing upon the matter under consideration, to appear before it at a time and place specified in the summons to be questioned or to produce that document, and retain for examination any document so produced;
 - (b) administer an oath to or accept an affirmation from any person called as a witness; or
 - (c) call any person present at the proceedings as a witness and interrogate such person and require such person to produce any document in his or her possession or custody or under his or her control, and such a person is entitled to legal representation at his or her own expense.

Tenure of office of members of Appeals Board

52. (1) A member of the Appeals Board shall hold office for a period not exceeding three years as may be specified in the letter appointing the member.

(2) A member shall be eligible for re-appointment for not more than two consecutive terms.

Removal from office and resignation

53. (1) The Minister may remove a member of the Appeals Board from office where the member —

- (a) is absent without reasonable cause for three consecutive meetings of the Appeals Board of which the member has had notice;
- (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect; or
- (c) contravenes a provision of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Appeals Board.

(2) The Chairperson or any member may resign from office by giving 30 days' notice, in writing, to the Minister.

Remuneration

54. A member of the Appeals Board shall be paid such remuneration and allowances as the Minister may determine.

Meetings of Appeals Board

55. (1) The first meeting of the Appeals Board shall be held on such date, time and place as the Chairperson may determine.

(2) Any subsequent meeting shall be held on such date, time and place as the Chairperson may, in consultation with the Appeals Board, determine.

(3) The Appeals Board shall meet at least four times a year, for the transaction of its business.

(4) The quorum at any meeting shall be simple majority of the members.

(5) A decision of the Appeals 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 deliberative vote.

(6) The Ministry shall provide secretarial services to the Appeals Board.

56. A person aggrieved by the decision of the Appeals Board under this Act, may within 30 days from the date of the notification or communication of the decision, appeal against that decision to the High Court.

Appeals to
High Court

PART IX — *General Provisions*

- 57.** (1) Any person who —
- (a) refuses access to required records or entry of authorised officers or otherwise fails to comply with an order under this Act;
 - (b) operates a cinema or exhibit without a licence;
 - (c) fails to provide access, samples or information to an authorised officer upon request;
 - (d) gives false or misleading information, to an authorised officer engaged in carrying out his or her duties under this Act; or
 - (e) attempts to improperly influence an authorised officer in the exercise of his or her official functions under this Act, commits an offence.
- (2) If an offence is committed by a body corporate under this Act, and it is proved to have been committed with the consent of or is attributed to any neglect or default on the part of a person being a —
- (a) director;
 - (b) manager;
 - (c) secretary; or
 - (d) officer of the body corporate; or
 - (e) person purporting to act in any such capacity, that person and the body corporate shall be guilty of an offence and liable to be proceeded against as if he or she committed the offence.
- (3) A person who commits an offence under this Act shall be liable —
- (a) on first conviction, a fine of not less than P50 000, and suspension of his or her license for one month;
 - (b) on second conviction, a fine of not less than P100 000, and suspension of his or her license for three months; and
 - (c) on third conviction, a fine of not less than P200 000 and a revocation of his or her license for a period of three years.

Offences and
penalties

58. No matter or thing done or omitted to be done by a member or staff of the Commission shall, if the matter or thing is done or omitted in good faith in the course of the performance of the functions of the Commission, render that member or staff liable to any action, claim or demand.

Protection
from personal
liability

B.730

Regulations

59. (1) The Minister may, in consultation with the Board, make regulations for the better carrying out of the object and purpose of this Act or to give force and effect to its provisions.

(2) Without prejudice to the provisions of subsection (1), the Minister may make regulations for the —

- (a) production, exhibition, storage, transport, labelling, advertising and sale of films;
- (b) sale and conditions of sale of any food in cinemas;
- (c) display of advertising material;
- (d) conduct of licensees;
- (e) criteria and procedures for the issue, suspension and revocation of licences under this Act;
- (f) standards of hygiene to be maintained in cinemas;
- (g) reservation of some trades and businesses in the film industry reserved for citizens; and
- (h) any matter required to be prescribed under this Act.

Repeal of Cap. 60:02

Savings and transitional provisions

60. The Cinematograph Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

61. (1) Any subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as such legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.

(2) Any legal proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(3) Any decision made under the repealed Act shall be binding as if they were made under this Act.

(4) The administrative structures of the office of the Board of Censors in existence under the repealed Act immediately before the commencement of this Act shall, to the extent that their continued existence is not inconsistent with this Act, continue in existence.

(5) Any person who is an officer or employee of the office of the Board of Censors immediately before coming into operation of this Act shall continue in office for the period for which, and shall be subject to the conditions under which, he or she was appointed.