

TOWN COUNCIL REGULATIONS

(under section 9)

(1st April, 1966)

ARRANGEMENT OF REGULATIONS

PART I

Preliminary

REGULATIONS

1. Citation
2. Interpretation
3. Application
4. Establishment of councils
5. Councils to be bodies corporate
6. Constitution of councils
7. Qualification for membership of councils

PART II

Establishment and Constitution of Councils

8. Tenure of office
9. Vacation of seats
10. Pecuniary interest of members
11. Mayor of council
12. Deputy Mayor of council
13. Filling vacancies
14. Elections
15. Qualifications of voters

PART III

Proceedings of Councils

16. Chairmanship of meetings
17. Quorum
18. Voting at meetings
19. Meetings of councils
20. Meetings to be public
21. Minutes to be kept
22. When minutes confirmed regularity deemed
23. Minutes open for examination
24. Committees
25. Joint committees of two or more councils

PART IV

Privilege of Immunity

26. Immunity from legal proceedings
27. Freedom from arrest
28. Exercise of process
29. Definition

PART V

Staff

- 30. Appointment of employees
- 31. Staff rules

PART VI

Powers and Duties of Councils

- 32. Functions and general powers of councils
- 33. General duties of councils
- 34 to 40.
- 41. Manner of entering into certain contracts
- 42. Exclusion of certain contracts from regulation 41
- 43. Three quotations or tenders to be considered
- 44. Notice calling for tenders to be published and posted
- 45. Content of notice and delivery of tenders
- 46. Particulars of contract to be supplied
- 47. Opening of tenders
- 48. Quotations and tenders to be considered by council or committee
- 49. Matters to be taken into account
- 50. Signature of contracts
- 51. Tenderers to be informed
- 52. Minister may approve waiver
- 53. Standing orders and financial rules

PART VII

Valuation and Rating

- 54. Appointment of valuation officer
- 55. Valuation officer's powers of entry
- 56. Valuation officer may obtain information
- 57. Establishment and constitution of valuation courts
- 58. Terms of office of members of valuation courts
- 59. Meeting, decisions and procedure of valuation courts
- 60. When member of valuation court may not sit
- 61. Clerk of valuation court
- 62. Date and place of sittings of valuation court
- 63. Rateable property
- 64. Listing of non-rateable property
- 65. Valuation of property for rating purposes
- 66. Interim valuation
- 67. Objection to interim valuations
- 68. Refund of excess rates paid
- 69. Basis of valuation
- 70. Particulars to be inserted in valuation roll
- 71. Objections to valuation roll
- 72. Appearance before court
- 73. Power of valuation court
- 74. Appeal
- 75. Record of proceedings of valuation court
- 76. Chairman to certify valuation roll
- 77. Advertisement of valuation roll
- 78. Correction of valuation roll
- 79. Pending appeal not to interfere with decision of valuation court

80. Valuation roll may not be set aside
81. Annual assessment and levy of rates
82. Special rates
83. When rates are due and payable
84. To whom rates to be paid
85. Enforcement of payment of rates
86. Rate recoverable by action in magistrate's court
87. Evidence of rate
88. When owner liable to pay portion only of rate
89. Payment of rate by occupier
90. Refusal by occupier to disclose name of owner
91. Interest on unpaid rates
92. Transfer of ownership of property
93. Abatement of rates
94. Writing off rates
95. Grant of leases of unoccupied property
96. Term and rent
97. Condition precedent
98. Resumption of possession by owner
99. Application of moneys received under leases by the council

PART VIII

Revenues of Councils; Accounts and Audit

100. Revenue of councils
101. General funds
102. Bank account and investments
103. Borrowing powers
104. Accounts and audit
105. Supply of copies of statement and report
106. Disallowance and surcharge
107. Financial year
108. Annual estimates

PART IX

Dissolution of Councils

109. Minister may dissolve a council
110. Suspension of a member of a council

PART X

Miscellaneous

111. Power of entry
112. Authentication of orders
113. Service of notice
114. Penalty for obstruction
115. Recovery of Government expenditure

First Schedule - Functions which may be Conferred on Council
 Second Schedule -

L.N. 37, 1966,
 L.N. 61, 1966,
 L.N. 84, 1966,

S.I. 33, 1967,
S.I. 72, 1967,
S.I. 73, 1967,
S.I. 15, 1969,
S.I. 41, 1969,
Act 23, 1969,
S.I. 8, 1970,
S.I. 29, 1970,
S.I. 54, 1970,
S.I. 7, 1971,
S.I. 14, 1971,
S.I. 92, 1971,
S.I. 137, 1971,
S.I. 15, 1972,
S.I. 86, 1973,
Act 13, 1973,
S.I. 18, 1975,
S.I. 85, 1976,
S.I. 12, 1977,
S.I. 107, 1977,
S.I. 6, 1981,
S.I. 12, 1982,
S.I. 19, 1983,
S.I. 60, 1983,
S.I. 61, 1984,
S.I. 104, 1984,
S.I. 5, 1987,
Act 15, 1998,
S.I. 84, 1998,
S.I. 73, 1999,
S.I. 31, 2000,
S.I. 9, 2003,
S.I. 70, 2004,
S.I. 75, 2006.

PART I

Preliminary (regs 1-7)

1. Citation

These Regulations may be cited as the Town Council Regulations.

2. Interpretation

In these Regulations unless the context otherwise requires-

"appointed member" means a member of a council appointed by the Minister;

"auditor" means a person appointed by the Minister to perform the duties of auditor in terms of Part VII;

"council" means a city or a town council established in pursuance of the provisions of

regulation 4;

"council area" means the area for which a council has been established in pursuance of regulation 4;

"district council" means a district council duly established under the Local Government (District Councils) Act;

"elected member" means a member of a council elected in pursuance of the provisions of regulation 6;

"member of council" means an appointed member and an elected member and includes a Mayor or deputy Mayor;

"owner", in relation to land includes-

- (a) the person receiving the rent or profits of any land from the occupier thereof on his own account or as agent for any person entitled thereto;
- (b) any person who lawfully occupies or holds land in accordance with an agreement whereunder he is entitled to obtain transfer of such land on the fulfilment by him of the conditions prescribed by such agreement;

"town" includes a city;

"valuation court" means a valuation court established in pursuance of the provisions of regulation 57;

"valuation officer" means a valuation officer appointed as such in pursuance of the provisions of regulation 54.

3. Application

The provisions of these Regulations shall apply to all council areas.

4. Establishment of councils

(1) The Minister may by order published in the *Gazette* establish councils in respect of such areas as he may think fit.

(2) In any order made in pursuance of subregulation (1) or in any other order, the President may-

- (a) dissolve any existing township authority;
- (b) provide for the transfer of assets and liabilities of an existing township authority so dissolved to any council established in place thereof and for the vesting of such assets in such council.

(3) Any order referred to in subregulation (2) may provide for the continuance of the duties and functions of any existing township authority by that township authority until a specified date.

(4) Subject to the provisions of subregulation (3) upon dissolution in terms of any order referred to in subregulation (2) all members holding office in an existing township authority

shall cease to hold office.

(5) For the purposes of this regulation **"existing township authority"** means a township authority established under the provisions of Regulations made in pursuance of the Act.

5. Councils to be bodies corporate

A council shall be a body corporate having the name by which it is established and capable of suing and of being sued under the said name.

6. Constitution of councils

(1) A council shall be constituted in such manner and shall consist of such number of elected members or appointed members as may be provided by the order establishing it.

(2) The Minister may by subsequent order or orders published in the *Gazette* vary an order establishing a council.

(3) Notwithstanding anything contained in the order establishing a council, the Minister may appoint a public officer having special responsibilities relating to the development of the area to be an "ex-officio" member of the Council without voting rights but with all other rights enjoyed by members of the Council.

(4) A person appointed as a member of a council under subregulation (3)(b) shall have or enjoy all rights, other than voting rights, of a member of a council.

7. Qualification for membership of councils

A person shall be qualified to become a member of a council if he is qualified, in terms of regulation 15, to vote in any election for members of the council and does not possess the disqualifications for membership of the National Assembly referred to in section 62 of the Constitution:

Provided that the provisions of this regulation relating to qualification or disqualification for membership of a council shall not apply to a person appointed a member of a council under regulation 6(3).

PART II

Establishment and Constitution of Councils (regs 8-15)

8. Tenure of office

(1) Every elected member of a council shall, without prejudice to his re-election, retire from office on the day appointed for the taking of any poll which may become necessary at any general election to the council.

(2) The appointed members of a council shall hold office at the pleasure of the Minister.

9. Vacation of seats

The seat of a member of a council shall become vacant-

(a) upon his death;

(b) if, without having obtained leave from the chairman, he absents himself from three

consecutive ordinary meetings of the council;

- (c) if he is appointed to, or to act in, any office or place of profit in the gift or disposal of the council;
- (d) if he has been declared insolvent or adjudged or otherwise declared bankrupt under the law in force in any part of the Commonwealth and has not been discharged or has made a composition with his creditors and has not paid his debt in full;
- (e) if he is sentenced by a court in any part of the Commonwealth to death or to imprisonment for a term exceeding six months, or having been under suspended sentence for such a term imposed by such a court, is ordered by the court to serve that sentence:

Provided that the Minister may at the request of the member from time to time extend for a period of 30 days his vacation of office under this paragraph to enable the member to pursue any appeal in respect of his conviction or sentence so however that extensions of time shall not exceed 90 days in the aggregate;

Provided further that if at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less than six months, or some lesser punishment is substituted for such imprisonment, his seat shall not become vacant under the provisions of this paragraph;

- (f) if he ceases to hold the qualifications required by regulation 7;
- (g) if he ceases to reside in the area in respect of which the council has been established; or
- (h) if he resigns by giving written notice to the Town Clerk.

10. Pecuniary interest of members

(1) If a member of a council-

- (a) has a pecuniary interest, direct or indirect, in a contract or proposed contract or any other matter; and
- (b) is present at a meeting of a council at which such contract or other matter is the subject of consideration,

he shall at such meeting disclose such interest and, subject to the provisions of any standing order made under regulation 53, shall not take part in the consideration or discussion of, or vote on, any question relating to such contract or other matter, unless after such disclosure the council by a majority of the members present gives such member leave to take part or to vote.

(2) Any member of the council who contravenes this regulation by failing to disclose his interest or by participating without due leave in the consideration of or decision upon a contract, proposed contract or other matter shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding six months and the court before which he is convicted may order that he shall account to the council for any profits which may accrue or have accrued to him in respect of such contract or other matter, and

that he shall vacate his seat, and his seat shall thereupon become vacant:

Provided that if it be proved by such member that his omission to disclose or his participation was not due to any want of good faith, he shall be deemed not to have contravened this regulation.

11. Mayor of council

(1) There shall be a Mayor for each council who shall be elected by secret ballot from among the members of the council by the members present, and such election shall be the first business transacted at the first meeting of the council and thereafter annually.

(2) The Mayor shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor is elected and assumes office.

(3) During his term of office, the Mayor shall continue to be a member of the council notwithstanding the provisions of regulation 8.

(4) A retiring Mayor may be re-elected to the office which he is vacating.

(5) The nomination of a candidate for election to the office of Mayor shall be made on a nomination paper which shall therein specify the names of the candidate, the proposer, the seconder and two supporters, none of whom shall at the same time be the candidate, the proposer, the seconder or other supporter:

Provided that where a council has less than 10 voting members, it shall be sufficient that the nomination of a candidate for the office of Mayor is supported by at least one member who shall not at the same time be the candidate, the proposer or seconder.

(6) On the election of the Mayor the outgoing Mayor shall preside:

Provided that at the first meeting of the council after its constitution, and subsequently if the office of the outgoing Mayor is vacated from any cause or if the outgoing Mayor is a candidate for re-election as Mayor, or if the Mayor is for any reason unable to attend, the members of the council present shall elect a chairman from among themselves (other than a candidate for the office of Mayor) who shall preside for the purposes of such election.

(7) The person presiding at the election of the Mayor shall have a deliberative vote only, and, in the case of equality of votes for two or more candidates, the election shall be determined by lot between those candidates.

(8) Notwithstanding subregulation (1) no person who is a candidate for election to the office of Mayor shall be entitled to speak or vote in the election.

(9) In the event of the office of Mayor becoming vacant from any cause whatsoever during the term of office of such Mayor, a successor shall, at the next meeting of the council after such vacancy occurs, be elected by the members of the council from amongst themselves by secret ballot and the person so elected shall forthwith enter upon his office and shall serve as Mayor for the remainder of the period for which the Mayor whose office became vacant had been elected.

(10) A person who has been elected Mayor shall within seven days after the day of election and before he acts in such office make before and deliver to the Town Clerk a declaration of acceptance of office; if the declaration of acceptance of office is not made as

aforesaid the office of Mayor shall thereupon become vacant.

(11) A council may vote out of the revenues of the council as a personal allowance to the Mayor such sum, not exceeding such maximum as the Minister may determine, as it thinks reasonable; the amount of such allowance shall be fixed at the commencement of the Mayor's term of office and shall not be altered during the said term.

(12) Whenever the duties of the office of the Mayor are performed for any continuous period not being less than one month by the deputy Mayor, the allowance under this regulation shall be paid for such period to the deputy Mayor.

12. Deputy Mayor of council

(1) There shall be a deputy Mayor for each council who shall be elected by secret ballot from among the members of the council by the members present; and the nomination of a candidate for election to the office of deputy Mayor shall follow immediately after the election of the Mayor and the nomination shall be made on a nomination paper which shall therein specify the names of the candidate, the proposer, the seconder and two supporters who shall not at the same time be the candidate, the proposer, the seconder or other supporter:

Provided that where a council has less than 10 members, it shall be sufficient that the nomination of the candidate for the office of deputy Mayor is supported by at least one member who shall not at the same time be the candidate, proposer or seconder.

(2) The deputy Mayor shall, unless he resigns or ceases to be qualified or becomes disqualified, continue in office until his successor is elected and assumes office.

(3) During his term of office, the deputy Mayor shall continue to be a member of the council notwithstanding the provisions of regulation 8.

(4) A retiring deputy Mayor may be re-elected to the office which he is vacating.

(5) On the election of the deputy Mayor the newly elected Mayor or, in his absence, a member of the council elected as chairman by the members of the council present, shall preside, but he shall have a deliberative vote only, and in the case of equality of votes for two or more candidates the election shall be determined by lot between those candidates.

(6) Notwithstanding subregulation (1) no person who is a candidate for election to the office of deputy Mayor shall be entitled to speak or vote in the election.

(7) In the event of the office of the deputy Mayor becoming vacant from any cause whatsoever during the term of office of such deputy Mayor, a successor shall, at the next meeting of the town council after such vacancy occurs, be elected by the members of the council from amongst themselves by secret ballot, and the person so elected shall forthwith enter upon office and shall serve as deputy Mayor for the remainder of the period for which the deputy Mayor whose office became vacant, had been elected.

(8) The deputy Mayor shall, whenever it becomes necessary owing to the death, resignation, absence, illness or incapacity of the Mayor, have authority to exercise all the powers and discharge all the duties vested in and imposed upon the Mayor under and by virtue of these Regulations.

(9) A person who has been elected deputy Mayor shall, within seven days after the day of election and before he acts in such office make before and deliver to the Town Clerk a

declaration of acceptance of office; and if the declaration of acceptance of office is not made the office of deputy Mayor shall thereupon become vacant.

13. Filling vacancies

If the seat of a member of a council becomes vacant by virtue of any provision of these Regulations, the vacancy thus caused shall be filled in such manner as may be prescribed by the Minister in the order establishing the council; and a person who becomes a member of the council by virtue of the provisions of this regulation shall have all the rights and privileges of, and be under the same obligations and liabilities as, the member whom he replaces.

14. Elections

The manner of election of members of a council shall be as prescribed in the order establishing the council, or any later order varying or amending that order.

15. Qualifications of voters

(1) Subject to the provisions of subregulation (2) any person who is registered as a voter for the purpose of elections of Elected Members of the National Assembly and enrolled in a voters roll prepared and certified in terms of the Electoral Act for the area, or any part of the area, in respect of which a council has been established shall be entitled to vote in any election of members of the council.

(2) No person shall be entitled to vote in more than one area, or part of one area, in respect of which a council has been established.

(3) A person shall be entitled to vote only in the area in which he resides.

(4) A person who has more than one place of residence shall be entitled to vote only in the area where his principal residence is situated.

PART III

Proceedings of Councils (regs 16-25)

16. Chairmanship of meetings

The Mayor or in his absence the deputy Mayor of a council shall preside at any meeting of the council; and if both the Mayor and the deputy Mayor are absent from or during any meeting, the members of the council present shall elect one of themselves as temporary chairman during the absence of the Mayor and deputy Mayor.

17. Quorum

The presence of more than half of the members of a council shall constitute a quorum.

18. Voting at meetings

(1) All matters shall be determined by a majority of the votes of the members present at any meeting.

(2) The member presiding at any meeting shall have an original vote as a member of the council, and a casting vote.

19. Meetings of councils

(1) A council shall hold ordinary meetings at intervals of not more than three months, at such place and time as the council may from time to time determine.

(2) The Mayor may at any time, and shall at the request in writing of not less than one-third of the members of the council, call a special meeting; the notice of a special meeting shall specify the objects of such meeting, and no other business may be discussed at such meeting.

(3) The Mayor may adjourn any meeting of the council for any period not exceeding 14 days, and any business of such council conducted after the meeting has been so adjourned shall be of no effect.

20. Meetings to be public

Every meeting of a council, other than a meeting appointed by a council, or a committee of the whole council, shall be open to the press and the public:

Provided that the council may by a majority of members present order that the press or the public or any member of the press or the public shall withdraw.

21. Minutes to be kept

(1) Minutes of the proceedings of every meeting of a council and of every committee thereof shall be kept in English, and shall be regularly entered in a book kept for that purpose and shall be confirmed at the next ordinary meeting.

(2) Such minutes shall record the names of the members, including persons co-opted, present at the meeting, and when signed by the chairman shall, unless the contrary be proved, be deemed to be a correct record of the proceedings of the meeting of which they purport to be the minutes.

22. When minutes confirmed regularity deemed

When the minutes of the proceedings of any meeting of a council, or a committee thereof, have been confirmed, such meeting shall, until the contrary is proved, be deemed to have been duly convened and held, and all the members present at such meeting shall be deemed to have been duly qualified and, where the proceedings so recorded are those of a committee, the committee shall, until the contrary is proved, be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

23. Minutes open for examination

The minutes of the proceedings of a council shall be at all reasonable times open for examination by any member of the public, and any such person may obtain a copy thereof, or an extract therefrom, on payment of such fee as may be prescribed by the council.

24. Committees

(1) Every council shall appoint a Finance Committee and an Education Committee, and may from time to time appoint such other committees, either of a general or special nature, consisting of such number of members as the council may think fit, for the purpose of transacting such business or performing any act or duty which in the judgment of the council

would more conveniently be performed by means of a committee, and may delegate to any such committee such powers, except the power to make bye-laws and any power to raise money by rate or otherwise, as it may think fit; and unless in appointing any such committee the council has appointed one of the members as chairman thereof the committee shall elect one of the members as chairman thereof.

(2) In appointing members to the various Council Committees, the Council shall make appointments based on a cross sectional representation of all parties represented in the Council, with each member of the Council being appointed to at least one Committee.

(3) A council may revoke or amend any delegation made under the provisions of subregulation (1) and may attach conditions to such delegation, including general or particular directions, as to the manner in which any delegated power is to be exercised.

(4) A committee other than a Finance Committee, may co-opt persons other than members of the committee, and such co-opted persons may take part in the proceedings of the committee, but shall not have the right to vote thereat.

25. Joint committees of two or more councils

A council may concur with any one or more other councils or with a district council in appointing from among their respective members a joint committee of such town or district councils for any purposes in which they are jointly interested, and may delegate to such joint committees, with or without restriction or conditions, any powers or functions of such councils relating to the purpose for which such joint committee was formed, except the power to make bye-laws or the power to raise money by rate or otherwise.

PART IV

Privilege of Immunity (regs 26-29)

26. Immunity from legal proceedings

No civil or criminal proceedings may be instituted against a member of a council for words spoken before, or written in a report to the council or to a committee thereof, or by reason of any matter brought by the member by petition, motion or otherwise.

27. Freedom from arrest

A member of a council is not liable to arrest-

- (a) for any civil debt whilst going to, attending at or returning from a meeting of the council or a committee thereof; or
- (b) within the precincts of the council while the council or a committee thereof is sitting, for any criminal offence without the consent of the Mayor.

28. Exercise of process

No process issued by any court in the exercise of its jurisdiction shall be served or executed on a member of a council within the precincts of the council while the council is sitting.

29. Definition

In this Part-

"precincts of the council" means the chamber and offices of a council and any gallery or place provided for the use or accommodation of members of the public, and includes, while the council is sitting, the entire building in which the chamber of the council is situated, and any forecourt, yard, enclosure or open space adjoining or appertaining to such building and used or provided for the purposes of the council.

PART V

Staff (regs 30-31)

30. Appointment of employees

(1) Subject to the provisions of the Unified Local Government Service Act, a council shall appoint such employees as it may deem necessary.

(2) A council shall pay to its employees such emoluments as it may determine.

(3) The powers conferred upon a council by subregulations (1) and (2) shall be exercised subject to the general or specific approval of the Minister and in conformity with any rules made under regulation 31.

31. Staff rules

The Minister may publish in the *Gazette* such rules as to him may seem proper governing the matters referred to in regulation 26 and all councils shall give effect to any such regulations.

PART VI

Powers and Duties of Councils (regs 32-53)

32. Functions and general powers of councils

(1) The Minister may in the order establishing a council, and subject to such limitations and conditions as he may deem fit, provide that a council either shall be required to perform or may perform any of the functions set out in the First Schedule.

(2) Subject to the provisions of these Regulations, a council shall have power to do anything and enter into any transaction not unlawful which in its opinion is calculated to facilitate the proper discharge of any functions conferred or imposed upon it by or under these Regulations or any other law, or which is incidental or conducive thereto.

33. General duties of councils

It shall be the duty of a council to perform the functions it is required to perform and otherwise exercise its powers so as to secure and promote the health, order and good government of the area for which it has been established.

34 to 40.

41. Manner of entering into certain contracts

Subject to regulation 38, if the liability of a council under any contract for the supply of any goods or materials or the execution of any works or the provision of any services, other than

professional services, for or to the council-

- (a) is not to exceed P25,000, the contract shall be in writing but the council shall not be required, before entering into it, to invite any quotations;
- (b) is to exceed P25,000 but not to exceed P100,000, the contract shall be in writing and the council shall not enter into it without inviting quotations; or
- (c) is to exceed P100,000, the contract shall be embodied in a formal document approved by the council and the council shall not enter into it without inviting tenders.

42. Exclusion of certain contracts from regulation 41

So much of regulation 41(a) as relates to the requirement that a contract such as is therein referred to shall be in writing and the whole of regulation 41(b) and (c) shall not apply to any contract for the purchase by a council of perishable goods bought on public market or any purchase entered into by council as a result of bidding at a public auction.

43. Three quotations or tenders to be considered

Where under the provisions of these Regulations or any other law a council may not enter into a contract without inviting quotations or tenders as the case may be, it shall not be competent for the council to enter into such a contract except after consideration of at least three quotations or at least three tenders, as the case may be, unless for good and sufficient reasons recorded in the council's minutes three quotations or tenders cannot be obtained.

44. Notice calling for tenders to be published and posted

(1) Whenever a council is required to invite tenders in terms of regulation 41(c) it shall, in addition to any individual invitation it may issue, call for tenders by notice published in the *Gazette* and in a newspaper circulating in Botswana, which notice shall also be posted at the council's offices on a notice board prominently open to public inspection.

(2) Such publication and posting shall be effected 28 clear days before tenders are to be considered on behalf of the council.

45. Content of notice and delivery of tenders

(1) Any notice published and posted as required in regulation 44, and any individual invitation for tenders, shall call for tenders to be delivered to the Town Clerk by a specified time and a specified date, not being less than 14 days after the date when the notice is last published or posted, in plain sealed envelopes marked "Tender for . . .".

(2) All tenders shall be delivered by the time specified to the Town Clerk in plain sealed envelopes marked as aforesaid.

46. Particulars of contract to be supplied

A council shall not enter into any contract to which regulation 41(c) applies unless full and identical particulars have been supplied to every person who, not later than three days after the notice calling for tenders was last published or posted, applies to the council therefor; such particulars shall be supplied to the applicants by the council within seven days after the

said notice was last published or posted.

47. Opening of tenders

(1) All tenders for any one contract shall be opened at one time in the presence of the members of the council, or a committee thereof duly appointed by the council, and the Town Clerk.

(2) Notwithstanding anything in regulation 20, any meeting of the council, or a committee thereof duly appointed by the council, at which tenders are opened shall be open to the members of the public.

(3) Not later than seven days before any such meeting is held, written notice thereof shall be posted by the Town Clerk to every person who has informed the council in writing of his wish to receive such notice.

48. Quotations and tenders to be considered by council or committee

(1) Whenever a council is required to invite quotations or tenders, those which have been received shall be placed before the council, or a committee thereof duly appointed by the council, and be considered by it.

(2) For the purpose of considering quotations or tenders the council, or a committee referred to in subregulation (1), shall have power to obtain professional or technical advice.

49. Matters to be taken into account

(1) In considering quotations or tenders a council shall take into account the contractual reliability of the tenderers or the persons submitting quotations as well as the need to achieve economy, efficiency and the development of Botswana industries.

(2) A council is not obliged to accept the lowest or any tender or quotation but in any case where the lowest quotation is not accepted the reasons why it is not accepted shall be recorded in the council's minutes, and where the lowest tender is not accepted, the council shall report the reasons why it is not accepted to the Minister.

50. Signature of contracts

Contracts required by these Regulations to be in writing or to be embodied in a formal document shall be signed on behalf of a council by the Mayor, or by the chairman of the committee concerned (if any), and by the Town Clerk.

51. Tenderers to be informed

When a council has decided upon the question of acceptance of tenders it shall forthwith inform the tenderers, whether successful or unsuccessful, of the result.

52. Minister may approve waiver

Notwithstanding any of the provisions of regulations 41 to 51 inclusive, the Minister may approve any application made by any council to waive anything required to be done under these provisions relating to contracts.

53. Standing orders and financial rules

(1) A council shall make such standing orders as may be necessary for the conduct of its business; and without prejudice to the generality of the foregoing, shall make standing orders for the following purposes-

- (a) the regulation of the business and procedure of the council;
- (b) to ensure the punctuality of the attendance of the members at meetings, and to prevent meetings being held without adequate notice to members; and
- (c) to maintain order and method in the despatch of business and in the conduct of meetings.

(2) Every council shall transmit copies of all standing orders made by it under subregulation (1) to the Minister, who shall have power by notice to such council to amend or revoke any such standing order.

(3) The Minister may frame model standing orders of the same nature as the standing orders prescribed by subregulation (1) and shall communicate all model standing orders so framed to all councils.

(4) The Minister may, by notice to any council, specify any or all model standing orders framed and communicated under subregulation (3) as standing orders of such council, and the standing orders specified in such a notice shall, as soon as a council receives it, have effect as standing orders of such council until amended or revoked by the Minister by notice to such council and, if in conflict with any standing orders made by such council under subregulation (1), shall prevail over them.

(5) A council shall make such financial rules as may be necessary for the general conduct of its financial affairs.

PART VII

Valuation and Rating (regs 54-99)

54. Appointment of valuation officer

(1) Every council shall appoint one or more valuation officers approved by the Minister to make any valuation and valuation rolls provided for in this Part.

(2) No valuation officer shall make a valuation of any land in which he is personally interested, directly or indirectly, or in which his wife, partner or relative within the first degree of consanguinity or affinity is interested, directly or indirectly, without disclosing the nature and extent of such interest.

(3) Every valuation officer shall submit to the Mayor a list of land in which he is so interested, setting out fully the nature and extent of his interest, and the Mayor shall transmit such list to the valuation court.

55. Valuation officer's powers of entry

(1) Every valuation officer provided with written authority signed by the Mayor shall have power to enter in the daytime into and upon any property within the council area for the purpose of carrying out his duty under this Part, provided that, before so entering into and upon any property the valuation officer shall give the owner or occupier at least 24 hours

notice of his intention to visit and enter upon the property.

(2) Any person who obstructs or hinders a valuation officer in the exercise of his duties under subregulation (1) shall be guilty of an offence and liable to a fine not exceeding P100 or, in default of payment thereof, to imprisonment for a term not exceeding three months.

56. Valuation officer may obtain information

(1) A valuation officer may require the owner or occupier or person in charge of any land in the council area to furnish him with written particulars and any information upon such matters as may be necessary to enable him correctly to value such land, including the names of the owner and occupier thereof and any other necessary particulars.

(2) If any person refuses or wilfully omits to give any such written particulars or information or wilfully makes any false statement or wilfully does anything which could reasonably lead to an under-valuation of any land, he shall be guilty of an offence and liable to a fine not exceeding P100, or, in default of payment thereof, to imprisonment for a term not exceeding three months.

(3) No person convicted of an offence under this regulation shall thereby become exempt from liability to permit the entry of the valuation officer, or to supply the written particulars or information required.

57. Establishment and constitution of valuation courts

(1) There shall be established for each council a valuation court which shall have the jurisdiction, powers and authorities conferred upon it by these Regulations.

(2) The members of the valuation court shall be-

- (a) a person appointed by the Minister who holds or has held or is qualified to hold judicial office in terms of the Magistrates' Courts Act, who shall be chairman of the valuation court; and
- (b) two assessors to be nominated by the council and approved and appointed by the Minister, who need not be members of the council.

(3) The names of the persons so appointed shall be shown on the front of the valuation roll.

58. Terms of office of members of valuation courts

(1) The members of a valuation court shall hold office at the Minister's pleasure.

(2) When a member's office is for any reason vacated or a member is prevented by illness, absence or for any other cause from exercising his functions in the valuation court the Minister shall appoint a person to fill the vacancy or to act temporarily for the member during his absence or period of incapacity.

(3) The chairman and other members of the valuation court shall, except in the case of a member who is a member of the public service of Botswana, be paid out of the funds of the council such remuneration and allowances as the Minister, after consultation with the council, may from time to time determine.

59. Meeting, decisions and procedure of valuation courts

(1) The members of the valuation court appointed as assessors in terms of regulation 57(2)(b) shall give, either in open court or otherwise, such assistance and advice as the chairman may require, but the decision shall be vested exclusively in the chairman; and the agreement or disagreement of such assessors with the decision of the chairman shall be noted on the record.

(2) The Minister may make rules to regulate the procedure of all valuation courts; and if no rules are made or in any case not covered by the rules, the valuation court shall act in such manner and on such principles as it deems best fitted to do substantial justice and to effect and carry out the objects and provisions of this Part.

60. When member of valuation court may not sit

No person shall sit as a member of a valuation court at the hearing of any matter in which he is personally interested, directly or indirectly, or in which his wife, partner or relative within the first degree of consanguinity or affinity is directly or indirectly interested, or in which any company of which he is an officer or a shareholder is directly or indirectly interested.

61. Clerk of valuation court

The council shall appoint a clerk to its valuation court and shall determine the remuneration, if any, and allowances to be paid to such clerk from its funds:

Provided however that if a member of the staff of the council is appointed clerk he shall receive no additional remuneration for this function.

62. Date and place of sittings of valuation court

(1) The valuation court shall sit at such times and places as it may decide upon so as to complete its work in the shortest possible time compatible with effective adjudication.

(2) The clerk of the valuation court shall cause a notice showing the time and place of every meeting of such court to be exhibited on the notice board of the District Commissioner and at such other places as he may determine.

(3) At least six weeks notice shall be given of every meeting of such court.

63. Rateable property

(1) Subject to the provisions of this regulation, rateable land within the meaning of this Part means land within the council area except land that is-

- (a) vested in Government;
- (b) vested in the council;
- (c) set aside under the provisions of the Tati Concessions Land Act;
- (d) occupied for purposes of the provisions of public service:

Provided that this exemption shall apply only with the Minister's special consent;

- (e) subject to the provisions of regulation 81(3), used for any of the following purposes in so far as such land is used for such purposes only-
- (i) a public library or public museum of natural history or fine arts;
 - (ii) public religious worship or public religious purposes;
 - (iii) a school registered under section 17 of the Education Act or a hostel attached to such a school;
 - (iv) a public hospital or public institution for mentally disordered persons;
 - (v) an orphanage or a charitable institution supported entirely by voluntary contributions or payments made by the inmates towards their maintenance;
 - (vi) a public cemetery or crematorium;
 - (vii) recreation or sport other than horse racing or any sport for which an admission charge is made;
 - (viii) agricultural show purposes;
 - (ix) church property used for worship;
 - (x) church owned residences for the clergy;
 - (xi) hostels for the destitute, handicapped or for the aged;
- (f) owned by Botswana Railways other than land occupied by railway employees for residential purposes.

(2) If land is used for any of the purposes specified in subregulation (1)(e) and for some other purpose at the same time or at different times during any year, such land may be regarded as rateable in part and non-rateable in another part or as rateable during a portion of the year, as the case may be, and accordingly the council may apportion the valuation or rates or both valuation and rates.

(3) Nothing in this regulation shall be taken to exempt an owner of land from the payment of rates on land from which he derives a rent or income used for any of the purposes specified in subregulation (1)(e).

(4) It shall be lawful for the President in his discretion to make a grant to the revenue of the council in lieu of an owner's rate, on property vested in Government or set aside in the circumstances described in subregulation (1)(a) and (c) not exceeding the amount which would have been payable except for the provisions of subregulation (1)(a) and (c).

64. Listing of non-rateable property

(1) The owner of any land who claims that such land is not rateable shall forward such claim to the council and submit to it such particulars concerning the said land as the council may require to enable it to determine whether such land is rateable or not.

(2) If the council determines on the particulars supplied that such land is not rateable, the owner shall be notified in writing accordingly, and thereafter such land shall be listed as non-rateable until such time as the council determines otherwise or until such time as a

change takes place in the use of such land.

(3) If any change in the use of land listed as non-rateable takes place, the owner shall forthwith notify the council thereof, and thereupon the council shall again determine whether such land is rateable or not and notify the owner as provided in subregulation (2).

(4) The council may at any time demand from the owner such particulars of any land listed as non-rateable as it may require to determine whether such land is properly listed as non-rateable.

(5) If any owner as aforesaid fails or neglects to make a claim and to submit particulars in terms of subregulations (1) and (4), the said land shall be deemed to be rateable until such time as the said owner complies with the provisions of subregulation (1) or (4), as the case may be.

(6) If any owner of land which is listed as non-rateable, or which he claims should be listed as non-rateable, fails or neglects to notify the council of any change as required by subregulation (3), or submits particulars in terms of subregulation (1) or (4) which are incorrect and the council by reason of such failure or neglect or submission of incorrect particulars does not remove such land from the list of non-rateable property, then such land shall be rateable and the owner thereof shall be liable to pay rates in respect thereof as from the date of such failure or neglect or submission of incorrect particulars.

(7) Any owner who wilfully submits false particulars in any claim in terms of subregulation (1) or any notification in terms of subregulation (3), or any particulars demanded in terms of subregulation (4) shall be guilty of an offence and liable to a fine not exceeding P100 or, in default of payment thereof, to imprisonment for a term not exceeding three months.

(8) Nothing contained in this regulation shall affect-

- (a) the auditor's right to question the correctness in law of a council's action in placing any such land on the list of non-rateable land; or
- (b) the owner's right to test in a competent court of law a council's refusal to place any such land on the list of non-rateable land.

(9) Nothing contained in this regulation shall be deemed to impose any duties on the Government in respect of rateable land which is its property, and the provisions of this regulation shall not apply to any such land.

65. Valuation of property for rating purposes

The council shall as soon as possible after it has been established and thereafter from time to time but not less than once in every five years cause to be made a general valuation and valuation roll of all land within the council area.

66. Interim valuation

(1) The council may, and if called upon to do so by an owner of land, shall, cause an interim valuation to be made of-

- (a) any land which has become rateable since the completion of the current valuation roll;

- (b) land the value of which has been materially depreciated by flood or other disaster;
- (c) land discovered to have been omitted from the current valuation roll;
- (d) land materially improved or depreciated in value by reason of the operation of any town planning scheme;
- (e) land which has been subdivided into lots for building or other purposes:

Provided that where land valued as a whole has been divided amongst two or more owners the valuation of the said land shall, until the council resolves at any time to cause an interim valuation to be made of such land or until the next general valuation, be divided amongst the owners of the subdivided portions or where a portion is retained by the original owner, be divided amongst the original owner and person or persons to whom he has transferred portions of the land in such proportions as may be agreed upon between the persons concerned, and, failing agreement, the valuation officer shall cause an apportionment to be made at the expense of the persons who have failed to agree, which apportionment shall be final until the making of the said interim or general valuation; or

- (f) land materially increased or decreased in value from any cause peculiar to such land.

(2) Any such interim valuation shall be based on what the value of the land would have been at the last general valuation and any general increase or decrease in the value of land between the date of the last general valuation and such interim valuation shall be ignored.

(3) Upon the making of any interim valuation the same procedure shall be observed as is set forth in these Regulations with regard to general valuations.

(4) Any interim valuation made in terms of this regulation shall be forthwith added to the valuation role.

(5) Wherever any valuation is made in terms of this regulation, the council-

- (a) may, in the case of land which has become rateable, since the completion of the current valuation roll, cause the current rate to be collected in respect thereof and also any rates which would have been payable in respect thereof since the completion of the said valuation roll, had the valuation been made at the date such land became rateable;
- (b) may, in the case of land which is discovered to have been omitted from the current valuation roll, cause the current rate to be collected in respect thereof and also any rates which would have been payable in respect thereof since the completion of the said valuation roll, had the omission not been made;
- (c) shall, in the case of land materially improved or depreciated, in whole or in part, only be entitled to collect rates on the valuation of the land as determined under this regulation as from the date of such occurrence:

Provided that, where any land valued in terms of this regulation has been transferred to a new owner prior to such valuation being made, such new owner shall not be liable for any rates levied in respect of the period before the date upon which such land was transferred to him, but the owner at the date from which such

rate is payable shall be liable for the proportion of such rate up to the date upon which such land was transferred;

- (d) may, in the case of land subdivided, cause the current rate to be collected in respect of the subdivisions and also any rates which would have been payable in respect thereof since the date of transfer of the subdivisions, had the valuation thereof been made at that date:

Provided that the council shall refund any rates paid on the whole land in respect of the period for which rates on the subdivisions are paid.

(6) Except as is provided in subregulation (5), the current rate shall be payable only with effect from the date on which the interim valuation comes into force.

67. Objection to interim valuations

(1) Every such interim valuation shall be subject to any objection made thereto at the next valuation court.

(2) The same right of appeal as is provided in regulation 74 shall apply to any interim valuation made in terms of these Regulations.

68. Refund of excess rates paid

In the case of any land which is added to the valuation roll or the valuation of which is increased under the provisions of regulation 66, if at the next succeeding valuation court the value of the said land is fixed at a sum less than that on which the last preceding rate has been levied the owner shall be entitled to a refund of any rate paid by him in excess of that which would have been paid if the rate had been levied on the value as fixed by the said valuation court.

69. Basis of valuation

Subject to the provisions of regulation 66(2), where a general or interim valuation is made-

- (a) if any land is to be valued with improvements the basis of valuation of such land shall be the capital sum which the land might be expected to realize if offered for sale with all improvements existing thereon at the time of the valuation on such reasonable terms and conditions as a *bona fide* seller would require; and
- (b) if any land is to be valued without improvements the basis of valuation of such land shall be the capital sum which that land might be expected to realize if offered for sale exclusive of the improvements existing thereon at the time of the valuation on such reasonable terms and conditions as a *bona fide* seller would require,

due regard being had in either case not only to such particular rateable land, but to other rateable land of a similar class, character, value or position, and the land shall be considered subject to any restrictions imposed on it by a council under its bye-laws or by any town planning scheme which may either increase or decrease the value of such land:

Provided that any exceptional circumstance of a temporary nature which is likely to cause an abnormal price to be paid, shall be disregarded in arriving at the estimated price.

70. Particulars to be inserted in valuation roll

The valuation officer shall frame any valuation roll in such manner as to show-

- (a) the situation of the land;
- (b) the full name of the owner, and his address;
- (c) the description of the land; and
- (d) the value of the land both with and without improvements.

71. Objections to valuation roll

(1) As soon as a valuation roll has been completed by the valuation officer a copy thereof shall lie at the office of the Town Clerk for inspection by every ratepayer or his duly authorized representative who may at all reasonable times inspect such roll and make copies thereof.

(2) The council shall, by notice published in the *Gazette* and posted on such notice boards as it may determine, call upon ratepayers to lodge in writing with the Town Clerk and the clerk of the valuation court any objections they may have against the valuation of any land or in respect of any error or omission in relation to such land within 21 days from the first publication in the *Gazette* of such notice.

(3) No objections to the valuation roll shall be considered by the valuation court unless made within the time prescribed and in the manner aforesaid.

72. Appearance before court

(1) Every objection lodged by or on behalf of any ratepayer shall be brought before the valuation court by such ratepayer personally or by counsel, attorney or any other person duly authorized thereto by such ratepayer in writing.

(2) The council may appear before the valuation court at any of its sittings for the purpose of making any representations or objections on its behalf and shall be represented before the valuation court by such person or persons as the council may appoint.

(3) The representative of the council and the objector or his representative may call evidence and cross-examine any witness giving evidence before the valuation court.

(4) If the council objects to any valuation appearing in the valuation roll, it shall give written notice thereof to the owner of the land concerned and to the clerk of the valuation court at least 28 days before the day upon which the valuation court will sit to consider the valuation roll.

73. Power of valuation court

(1) The valuation court shall at each sitting proceed to consider the valuation roll and any objections made and may confirm any valuation or make such alterations or amendments in the valuation roll, whether objected to or not, either by way of reduction, increase, addition or alteration as it may deem just and expedient.

(2) No alteration or amendment shall be made to the valuation of any land to which no objection has been lodged until the owner of the land affected and the council have received

28 days' notice in writing from the clerk of the valuation court of the meeting of the valuation court at which any such alteration or amendment will be considered and of the nature and extent of the proposed alteration or amendment.

(3) The owner so affected and the council may make such representations to the valuation court as they may think fit.

(4) The valuation court shall not reduce or increase the valuation of land in the whole or any portion of the council area by a percentage.

(5) The valuation court may for the proper adjudication of all matters before it call witnesses and hear and receive and examine witnesses under oath or affirmation which shall be administered by the chairman, and may by notice under the hand of the chairman call upon any person who in its opinion is able to give material information concerning the valuation under investigation or who it suspects or believes has in his possession or custody or under his control any book, document or thing which has bearing on the said investigation to appear before it at a time and place specified in the notice to be interrogated under oath or to produce such book, document or thing.

(6) The valuation officer by whom any valuation under consideration has been made shall attend such valuation court and answer on oath or affirmation all questions which may be put to him or through the court in regard thereto.

(7) Any person who after being called upon to appear before the valuation court to be interrogated or to produce any book, document or thing as aforesaid fails without sufficient excuse to attend at the time and place specified in the notice, shall be guilty of an offence and liable to a fine not exceeding P50 in respect of each offence.

(8) Any such person who fails to remain in attendance until excused by the valuation court or refuses to be sworn or affirmed as a witness or fails to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him or knowingly makes a false answer to any question put to him or fails to produce any book, document or thing in his possession or custody or under his control when lawfully required to do so, shall be guilty of an offence and liable to a fine not exceeding P50 in respect of each offence.

74. Appeal

(1) On the determination by the valuation court of any matter under this Part any party who is dissatisfied may within one month appeal to the High Court whose decision shall be final and without appeal.

(2) Upon the hearing of the appeal the High Court may-

- (a) confirm, vary or reverse the determination appealed from;
- (b) remit the matter to the valuation court with instructions in regard to the taking of further evidence or the setting out of further information;
- (c) order the parties or any of them to produce at some convenient time before it such further proof as shall to it seem necessary or desirable;
- (d) take any other course which may lead to the just, speedy and, as much as may be, inexpensive settlement of the matter; and

(e) make such order as to costs as it may deem just.

(3) The Chief Justice may make rules for regulating appeals to the High Court under this regulation and for the procedure on such appeals:

Provided that until rules are so made the Rules of the Magistrates' Courts governing appeals in civil cases from Magistrates' Courts to the High Court shall, subject to any necessary modifications, apply and be followed.

(4) The valuation court shall amend the valuation roll in accordance with the decision or directions of the High Court and such amendment shall form part of the valuation roll in force with effect from the commencement of the valuation roll.

75. Record of proceedings of valuation court

(1) The valuation court shall keep a record of its proceedings and a note of the assessment, objection and finding in regard to each objection and shall notify the persons concerned of such finding; and such court shall cause any deposition taken before it to be taken down in writing and signed by the deponent, and shall authenticate it by the signature of the chairman as having been taken before such court.

(2) An objector or his authorized agent shall have the right to examine, without charge, the record of the valuation court proceedings relating to the land, the valuation of which he has objected.

(3) The valuation officer and the council shall at all times have access to the record.

76. Chairman to certify valuation roll

(1) When the valuation court has completed its consideration of the valuation roll and has made such alterations and amendments therein as it may deem necessary, the chairman of the valuation court shall sign and certify the same and the clerk of the valuation court shall thereupon transmit to the council a certified copy of the same showing the original valuation and all alterations made by the valuation court.

(2) Such valuation roll will become the valuation roll in force in the council area and shall supersede any previous valuation roll or assessment in force in the council area:

Provided that notwithstanding the provisions of regulation 73 it shall not be necessary for the valuation court to consider any valuation roll to which no objections have been lodged and any such roll shall be signed and certified by the Mayor.

77. Advertisement of valuation roll

The council shall cause a notice to be inserted in the *Gazette* informing all persons that the valuation roll has been completed and certified in terms of regulation 76 and that such valuation roll will become finally fixed and binding upon all persons concerned who do not before a date fixed in such notice, not being less than one month from the date of such notice, give notice of appeal from the decision of the valuation court in terms of this Part.

78. Correction of valuation roll

(1) Subject to the provisions of subregulation (2), the council may at any time after the valuation roll has been finally completed and certified by the chairman of the valuation court

or signed and certified by the Mayor in terms of the proviso to regulation 76 cause any error on such roll to be corrected and may authorize any such amendments to such roll as may be consequential on the change of ownership of any land.

(2) Before causing any error to be corrected the council shall notify the owner of the land of the proposed corrections.

(3) Such owner may within seven days of such notifications inform the council of his objection to the proposed corrections, in which event the objection shall be referred to the valuation court for determination.

(4) If no such objection is made the proposed corrections may be made, and the current rate may be collected in respect of the land.

79. Pending appeal not to interfere with decision of valuation court

The fact that an appeal is pending shall not in the meantime interfere with or affect the decision of the valuation court which forms the subject matter of the appeal and rates may be made, levied and recovered on the valuation fixed by such decision in like manner as if no appeal were pending:

Provided that in the event of the valuation being altered on appeal a due adjustment shall be made and amounts paid in excess shall be refunded by the council to the ratepayer and the amount short-paid shall be recoverable by the council from the ratepayer.

80. Valuation roll may not be set aside

No valuation contained in any valuation roll framed and certified under these Regulations and no rate based thereon shall be rendered void or be affected by reason of any mistake or variance amounting to a slight deviation not affecting the substance or calculated to mislead in the description of any rateable land or in the name of any owner thereof.

81. Annual assessment and levy of rates

(1) Subject to the provisions of this regulation, a council may, not more than once in every financial year, assess, raise and levy by bye-law, a rate upon all rateable land within the council area and such rate may be collected by the council in such amounts and at such intervals during the year as the council may determine:

Provided that, in the event of any period falling outside a financial year by reason of any change in the financial year of a council, the council may raise and levy a rate in respect of that period.

(2) If the Minister so directs, lower rates or no rates shall be levied under subregulation (1) for different classes of rateable land.

(3) In classifying such rateable land, regard shall be had to-

- (a) the situation of the land;
- (b) the area of the land;
- (c) the use to which the land is put;

- (d) the services of the council made available to such land; and
- (e) any other factors warranting a lower rate.

(4) Notwithstanding anything to the contrary contained in this regulation, where the council levies rates under the provisions of subregulation (1) which are declared by such council by resolution to include the cost of defraying in whole or in part the expenses incurred in providing, undertaking, executing, maintaining, and extending any scheme of sewerage or drainage and in providing sewerage, sanitary or rubbish removal services, the owner of any land referred to in regulation 63(1)(e) shall pay to the council for such services a proportion of the rates levied, and such proportion shall be calculated on such portion of the land as the council may determine.

(5) If in any financial year a council is required to meet any unforeseen expenditure or any expenditure which is of an unusual nature, and if such expenditure cannot reasonably be met by rates imposed in terms of subregulation (1), the council may, in addition to any such rates, assess, raise, levy by bye-law and collect a supplementary rate upon all rateable land within the council area.

82. Special rates

(1) Subject to the provisions of this Part a council may, for the purpose of recovering in whole or in part the expenses incurred by it in executing any works, make and levy by bye-law a special rate upon the owners of rateable land in that portion of the council area which derives special benefit from such works and make and levy by bye-law different special rates in respect of different classes of rateable land in that portion of the council area.

(2) In determining such different special rates, the council shall have regard to the factors mentioned in regulation 81(2).

83. When rates are due and payable

Every rate assessed by a council shall become due and payable by the owner upon a day to be fixed by the council, of which day and the amount of such rate, a council shall give at least 30 days' notice by publication in the *Gazette* and in such other manner as the council by resolution directs.

84. To whom rates to be paid

Whenever the council has given such notice as provided in regulation 83 of the day on which any rate will become due and payable, it shall be the duty of the persons liable for such rate to pay the amount thereof to the Town Clerk or any collector duly authorized by the council to collect and receive the same, failing which defaulters shall be liable to legal proceedings for the recovery of the amounts due by them:

Provided that the council may accept payment of any rate by instalments in such equal or varying amounts as may be determined by it and on such conditions as it may specify.

85. Enforcement of payment of rates

(1) A council shall collect rates and may sue for, and recover, any rates which are due and payable to the council.

(2) Where the owner of any property fails to pay the rates or any part thereof owing in respect of such property after the expiration of one month from the time fixed under regulation 83 for the payment of the rates, the council shall cause a written notice of demand to be served on that owner to pay the amount stated in the notice within 14 days after service thereof.

(3) Where a person makes default in payment of rates after the expiration of the time specified in subregulation (2), the council shall cause to be published in the *Gazette*, or in a newspaper circulating in the area, the name of that person and the amount of the rates owing by him.

(4) The council shall, as soon as is reasonably practicable after the publication of the name of a defaulting rate payer in accordance with subregulation (3), apply to a magistrate or judge or a summary warrant for the recovery from such defaulter, or from any property belonging to him wheresoever situate, of the amount of the rates owing by him and any interest accruing in respect thereof in accordance with regulation 91.

(5) The magistrate shall, after the expiration of 14 days from the date of receipt of the application and verification of such a return, grant the warrant.

(6) A warrant granted in accordance with the provisions of this regulation shall contain every authority and be executed in all respects as if it were a writ of execution against property issued out of the magistrate's court or the high court, and the bailiff of the court in executing the warrant shall conform to such rules and make such charges as are for the time being applicable to a writ of execution of such court.

86. Rate recoverable by action in magistrate's court

(1) Notwithstanding the provisions of section 81, any rates assessed in accordance with the preceding provisions of these Regulations and unpaid after the expiration of the notice for the payment of such rates shall be recoverable at the suit of the council in the magistrate's court for the district in which the council area is situated, whether the person liable for the payment of the rates is resident within the jurisdiction of such court or not.

(2) If the person proceeded against is not resident within the jurisdiction of the magistrate's court for the district in which the council area is situate the summons directed to him may be served upon him by a messenger of the magistrate's court of the district in which he is found or upon the person, if any, receiving any rents or profits of the rateable land in regard to which the rate alleged to be due is claimed, or who would receive the same if such rateable land were let or occupied.

87. Evidence of rate

In any proceeding to levy or recover rates or consequent on the levying or recovering of any rates under the provisions of these Regulations, the valuation rolls and records of the council, and all entries purporting to be made therein in the manner required by these Regulations, extracts or certified copies thereof signed by the Town Clerk, shall upon the production thereof be *prima facie* evidence of such rates and the contents thereof without any evidence that the notices required by or other requirements of these Regulations have been complied with:

Provided that it shall be competent for any person proceeded against to offer evidence to

prove the contrary.

88. When owner liable to pay portion only of rate

When the owner who is liable to pay any rate ceases to be the owner of the land in respect of which he is assessed to pay rate before the end of the year in which such rate was made such owner shall be liable to pay a portion only of the rate payable proportionate to the time during which he continued to be the owner and any person who is the owner of the land during the remainder of the year shall be liable to pay a portion of such rate in proportion to the time during which he is such owner, and the same shall be recovered from him in the same manner as if he had been originally assessed for such land.

89. Payment of rate by occupier

(1) When the owner of any rateable land has been assessed rate in respect thereof, and the rate remains unpaid for three months, the council or its collector as aforesaid may, at any time within 12 months after imposing the rate, demand the amount of such rate or any part thereof from the occupier for the time being of such rateable land.

(2) No right of action shall lie against such occupier by the council for the amount demanded but such occupier may pay such amount.

(3) Every such occupier shall be entitled, subject to any agreement to the contrary to deduct from any rent payable by him to any such owner, so much as was so paid by him; and the production of the receipts for such rates so paid by the occupier shall, subject as aforesaid, be a good and sufficient discharge for the amount so paid as payment of rent to the owner.

90. Refusal by occupier to disclose name of owner

If, on the request of the council or any collector of rates duly authorized as such, the occupier of any land refuses or wilfully omits to disclose, or wilfully misstates to the council or collector making such request, the name and address of the owner of such land, or of the person receiving or authorized to receive the rents of the same, he shall be guilty of an offence and liable to a fine not exceeding P25.

91. Interest on unpaid rates

In case any rates made or levied under the provisions of these Regulations remain unpaid after three months from the date fixed by the council for the payment thereof, interest upon such rates shall be chargeable and recoverable by such council at the rate of 12 per cent per annum, reckoned from the date upon which such period of three months has expired.

92. Transfer of ownership of property

Whenever as a consequence of any change of ownership of any land or for any other reason, liability to pay the rate in respect of such land is transferred, the person whose liability is transferred shall, unless he notifies the Town Clerk in writing of such transfer, continue to be liable for the rate as if such transfer had not occurred:

Provided that nothing in this regulation shall affect the liability of any transferee to pay the rate due after such transfer as aforesaid.

93. Abatement of rates

Whenever the council assesses the rate to become due and payable upon a day to be fixed by the council, it shall be lawful for such council by bye-law duly made to allow all persons liable for the payment of such rate such abatement of the amount thereof as it deems fit:

Provided that-

- (i) such abatement shall apply *pari passu* to all persons liable for such rate;
- (ii) such bye-law shall direct that no such abatement shall be allowed in whole or in part to any person who does not pay the rate as assessed at the office of the council on or before the date fixed as aforesaid for the payment thereof; and
- (iii) the council may refuse an abatement of rates in respect of any land liable for any arrears of rates.

94. Writing off rates

It shall be lawful for the council to write off any rates which have been in arrears and which are deemed by the council to be irrecoverable.

95. Grant of leases of unoccupied property

Where any rateable land in any council area is unoccupied, and the rates accrued thereon under these Regulations have been unpaid for five years, the council may take possession of such land and grant leases of the same subject to the provisions of these Regulations.

96. Term and rent

Every such lease shall be for such term, not exceeding three years, as the council may deem fit, and shall be granted for the best rent which may reasonably be had for such land and subject to such conditions as the council may determine.

97. Condition precedent

The council shall not take possession of any such land until three months after a notice in writing, setting forth the rates in respect of such land as are unpaid, and demanding payment thereof, and stating that, in default of payment the council will take possession of such land under the provisions of these Regulations, has been served upon the owner of such land, if he is within Botswana and his name and address are known to the council, or if there is no such owner so known until such notice has been affixed to some conspicuous place on such land and published in the *Gazette* at least once a month during three months; and every such notice shall contain sufficient description of the land to identify the same.

98. Resumption of possession by owner

Within three months after demand by the owner of any land taken possession of by the council as aforesaid, made within 30 years after the date of taking possession, and after payment of all arrears of rates due in respect thereof and interest upon all such arrears at the rate of 10 per cent per annum, such owner shall be entitled to resume possession of such land, subject to the terms of any lease theretofore lawfully granted by such council

under the provisions of these Regulations.

99. Application of moneys received under leases by the council

All rent, and all other moneys payable under any such lease, shall, until the payment of all arrears and interest as aforesaid by the owner, or the expiration of 30 years from the date of taking possession of such land by the council, whichever first happens, be received by the council and shall be applicable-

- (a) in defraying the expenses of and incidental to the giving of the notices as aforesaid, and the execution of such lease and the collection of the rents;
- (b) in payment to the council of all arrears of rates and other payments due in respect of such land, together with interest on all arrears of rates at the rate of 10 per cent per annum, from the time when interest upon such rates accrues respectively, and in payment of all rates and other payments becoming due thereon,

and the residue of such moneys shall belong to such person as would have been entitled to receive the rents or profits of such land if these Regulations had not been brought into operation.

PART VIII

Revenues of Councils; Accounts and Audit (regs 100-108)

100. Revenue of councils

The revenues of a council shall consist of-

- (a) such tax as the council is authorized by law to collect from the inhabitants of the council area;
- (b) such rates as the council is authorized by law to impose;
- (c) rents from property owned or administered by the council;
- (d) all moneys derived from licences or permits issued by the council and all taxes, dues and fees imposed under lawful authority by the council;
- (e) interest on investments;
- (f) such royalties as may by law be payable to or receivable by the council;
- (g) donations, contributions and endowments;
- (h) reimbursements;
- (i) such grants as the Government may make to the council;
- (j) any other moneys which may by law be paid to or received by the council.

101. General funds

(1) Every council shall establish and maintain a general fund and all moneys received by the council by way of revenue shall be paid into such fund, and all expenses incurred by the council in the execution of the powers and duties conferred upon it by or under the

provisions of these Regulations shall be defrayed out of such fund.

(2) The Minister acting in accordance with the advice of the Minister responsible for finance may from time to time issue instructions with regard to the general management, supervision and control of general funds established under the provisions of subregulation (1).

102. Bank account and investments

(1) Every council shall open and maintain an account at a bank, and shall operate such account in such manner as may be prescribed.

(2) A council may obtain overdraft facilities from its bank:

Provided that no overdraft shall at any one time exceed in all an amount equal to one-third of the revenue (excluding grants) received Bank account and investments by the council during the preceding financial year, except with the written approval of the Minister acting in accordance with the advice of the Minister responsible for finance.

(3) A council may invest all or any part of its moneys in such manner as the Minister acting in accordance with the advice of the Minister responsible for finance may approve.

103. Borrowing powers

(1) A council may raise loans of such amounts, in such manner, for such purposes, and upon such conditions as the Minister acting in accordance with the advice of the Minister responsible for finance may in each case approve.

(2) Such loans shall be secured on the revenue and assets of the council.

(3) The interest for the time being payable in respect of any moneys borrowed by the council shall be a first charge on the revenue and assets comprising the security for such moneys.

104. Accounts and audit

(1) Every council shall cause true accounts to be kept in accordance with such instructions as may from time to time be issued by the Minister.

(2) Within three months from the end of the financial year, every Council shall cause its accounts for the preceding financial year to be balanced and an annual statement or abstract of such accounts to be prepared and presented to the Auditor-General.

(3) Such accounts with all books, vouchers and papers relating thereto, with a copy of such annual statement or abstract shall be audited by the Auditor-General, who shall carry out his duties in accordance with the provisions of section 124(2) of the Constitution of Botswana, and, section 38 of the Finance and Audit Act.

(4) The Auditor-General shall complete the audit of accounts within twelve months of their submission to him.

(5) The Auditor-General's report and the audited statements shall be submitted to the-

(i) Minister;

- (ii) Minister responsible for finance and development planning; and
- (iii) Chief Executive Officer, who shall cause the report and the audited statements to be tabled before the Full Council.

(6) The Council shall upon receipt of the report and audited statements submit them to the Finance and General Purposes Committee which shall, together with Council Management and the Auditor-General, examine them in detail and shall report back with any recommendations to the Full Council.

(7) Every council shall permit the Auditor-General to check any cash, and verify the existence of any investments or other assets in its possession and to have access to all its accounts and all books, vouchers and papers relating thereto.

105. Supply of copies of statement and report

A copy of such annual statement or abstract and of the auditors report shall be furnished to any inhabitant of the area upon payment of such fee, if any, not exceeding 20 thebe, as may be fixed by resolution of the council.

106. Disallowance and surcharge

(1) The Chief Executive may make objection in writing to any item of expenditure, and shall report such objection to the Minister.

(2) The Chief Executive shall disallow any such item of expenditure or any part of such item on the ground that the expenditure is wrongful or unreasonable or on any other ground, and the Chief Executive may by order in writing surcharge any person as the person responsible for the payment of any such item having been made.

(3) If it appears to the Chief Executive that any failure to collect money due or any loss of money or damage to the property of a council has occurred through the wilful or negligent or wrongful act of any member or employee of the council, he shall by order in writing surcharge the amount thereof on any member or employee who, in the opinion of the Chief Executive, is so responsible.

(4) On ordering such surcharge, the Chief Executive shall forthwith report in writing to the Permanent Secretary the details thereof, and the Permanent Secretary may confirm the surcharge or remit all or any portion thereof as he may deem fit.

(5) Any sum so surcharged on any person shall be deemed to be a debt due to the council.

107. Financial year

The financial year of every council shall be from the first day of April to the 31st day of March in the next succeeding year.

108. Annual estimates

(1) Every council shall, after considering a report from its Finance Committee, at least three months before the beginning of any financial year prepare and approve by resolution detailed estimates of its revenue and expenditure for the forthcoming financial year, and shall submit such estimates together with a copy of such resolution for the approval of the

Minister, who may either approve the estimates as submitted, or disallow such estimates in whole or in part, or refer such estimates back to the council for further consideration.

(2) A council may in any financial year prepare and approve by resolution supplementary estimates of revenue and expenditure.

(3) If the supplementary estimates include expenditure in excess of 10 per cent of an approved head under the annual estimates; or include expenditure not contained in the annual estimates or expenditure which cannot be met from revenue available to the council, the supplementary estimates together with a copy of the resolution approving them shall be submitted for the approval of the Minister, who may approve or disallow the supplementary estimates either wholly or in part.

(4) A council shall not, except with the prior approval of the Minister, incur any expenditure which has not been included in the estimates or supplementary estimates of the council, duly approved where necessary by the Minister, but may, after considering a report of its financial committee, and with the approval of the Minister, make reallocations of any sum contained in such approved estimates:

Provided that any person designated for the purpose in writing by the Minister, may, within such limits as the Minister may direct, approve reallocations without reference to the Minister.

PART IX

Dissolution of Councils (regs 109-110)

109. Minister may dissolve a council

Notwithstanding anything contained in these Regulations, the Minister may by order published in the *Gazette* dissolve any council, and thereupon all members thereof shall cease to hold office; and the Minister may thereupon by further order published in the *Gazette* appoint other persons to form a Commission, and every such Commission shall have the status of the council which has been dissolved and may exercise all the powers and authorities vested in such council:

Provided that, before exercising the powers conferred by this regulation, the Minister may direct such enquiry to be held as he may think necessary, and at any such enquiry the council in question or any employee of such council, or any member of the public who has been assessed for any tax within the area of the council, or held liable to pay rates to the council shall be entitled to be heard.

110. Suspension of a member of a council

Notwithstanding any other provision contained in these Regulations, the Minister may by order published in the *Gazette* suspend any member of any council, and thereupon such member shall, during such suspension, cease to hold office; and the Minister may also declare the seat of any such member to be vacant.

PART X

Miscellaneous (regs 111-115)

111. Power of entry

Any local government officer employed under the provisions of the Unified Local Government Service Act, and any employee of a council duly authorized for the purpose by the council in writing, may at all reasonable times enter into or upon land or premises within the council area or part thereof for the purpose of carrying out any duty imposed by these Regulations and specified in such authorization.

112. Authentication of orders

Every order, notice or other document requiring authentication by the council may be sufficiently authenticated if signed by the Town Clerk and countersigned by the Mayor or any other person duly authorized by the Mayor.

113. Service of notice

Any notice or order under these Regulations or under any bye-law made hereunder may be wholly or in part in printing or in writing, or both, and where any notice or order is required to be given to the owner or occupier of any land or premises such notice or order, addressed to the owner or occupier thereof, as the case may require, may be served on the occupier of such land or premises, or left with some inmate of his abode, or if there is no occupier, may be put on some conspicuous part of such land or premises, and it shall not be necessary in any such order or notice to name the occupier or owner of such land or premises:

Provided that when the owner of any such land or premises and his residence are known to the council it shall be the duty of the council to cause every notice or order required to be given to the owner to be served on such owner, or to send every such notice or order by registered post, addressed to the residence or postal address of such owner.

114. Penalty for obstruction

Every person who at any time obstructs the council or the Town Clerk or any person employed by the council or acting under the directions of the council in the performance of anything which they are respectively empowered or required to do by these Regulations or by any bye-laws made hereunder or any other law shall be guilty of an offence and liable to a fine not exceeding P100 or in default of payment thereof to imprisonment for a term not exceeding three months.

115. Recovery of Government expenditure

(1) If the Government has expended public funds or incurred any liability as a result of a resolution of a council under which the council has undertaken to pay the Government a capital or recurrent contribution from its funds, the Minister may, if the council fails to make due payment in accordance with the provisions of such resolution, order that such payment be made from the funds of the council, and that any rate or tax necessary to produce the sum required shall be imposed upon and collected from the rateable or taxable inhabitants of the council area, or the part thereof concerned.

(2) If the Minister is satisfied that a judgment for the payment of money has been given by a competent court against a council, or that for good and sufficient reason money is due from and payable by a council, and the council fails to make due payment, he may order that such payment be made from the funds of the council and that any rate or tax necessary to produce the sum required shall be imposed upon and collected from the rateable or taxable inhabitants of the council area or the part thereof concerned.

FIRST SCHEDULE
FUNCTIONS WHICH MAY BE CONFERRED ON COUNCIL

(regulation 32)

1. To provide primary school and other educational services in relation to primary education.
2. (1) To take steps in addition to those taken by any other authority to safeguard and promote public health and prevent the occurrence of, or to deal with any outbreak or prevalence of, any disease.

(2) To provide public lavatories.

(3) To prevent the breeding of disease-carrying animals and insects.
3. To make, alter and maintain public roads and streets other than those the maintenance of which has been undertaken by the Government, and to name all roads and streets within the council area.
4. To provide public water supplies outside any area for which a water authority has been appointed by law.
5. (1) To provide for the protection of common property.

(2) To protect common lands and pastures.

(3) To establish and maintain common markets.

(4) To establish and maintain recreation grounds and other public places and to provide for the planting and protection of plants and shrubs.

(5) To establish and maintain stockyards, pens and dipping tanks.

(6) To collect and dispose of stray livestock and other domestic animals.

(7) To establish and maintain cemeteries and burial grounds.

(8) To provide services or assist in the provision of services giving relief from or attempting to avert natural calamity.

(9) To assist associations existing for the promotion of recreation and sport, arts and crafts or for the welfare of children or young persons or for the relief and support of blind, infirm, indigent, aged or destitute persons.
6. To enter into contracts or concessions for the sale of land or premises or of any interest therein.
7. To carry into effect any bye-laws made by the council.
8. To secure the proper working of the council (and any committees thereof) and the welfare of its employees.
9. To provide public electricity supplies in accordance with any law relating to the supply of electricity.
10. With the approval of the Minister on land vested in the council to build, maintain and let out housing.
11. To establish, maintain, and operate abattoirs.
12. With the approval of the Minister to establish, maintain, and operate premises whereon traditional beer is sold or otherwise handled.
13. With the approval of the Minister to acquire land by purchase for development for particular

purposes and sell such land in serviced lots.

SECOND SCHEDULE (repealed)