

**CHAPTER 65:06**  
**WASTE MANAGEMENT**  
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Schedule - Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their Disposal, 1989

Act 15, 1998.

**An Act to provide for the establishment of the Department of Sanitation and Waste Management; to make provision for the planning, facilitation and implementation of advanced systems for regulating the management of controlled waste in order to prevent harm to human, animal and plant life; to minimise pollution of the environment, to conserve natural resources; to cause the provisions of the Basel Convention to apply in regulating the trans-boundary movement of hazardous wastes and their disposal; and for matters incidental to and connected to the foregoing.**

[Date of Commencement: 4th September, 1998]

**PART I**

## **Preliminary (ss 1-2)**

### **1. Short title**

This Act may be cited as the Waste Management Act.

### **2. Interpretation**

In this Act, unless the context otherwise requires-

**"authorised officer"** means an officer of the Department authorised to act on its behalf and shall include such other public officers as the Minister may appoint after consultation with the respective authorities;

**"Basel Convention"** means the Basel Convention on the control of trans-boundary movement of hazardous wastes and their disposal, concluded in 1989, to which Botswana is a party, and the provisions of which are applicable in regulating the trans-boundary movement of waste as provided for under section 45;

**"clinical waste"** means-

- (a) waste which, unless rendered safe, may prove hazardous to any person, animal or plant coming into contact with it, arising from human or animal tissue, blood or other body fluids, excretions, drugs or other pharmaceutical products, radioactive materials, swabs or dressings, microbiological cultures and potentially infected waste from pathology departments or syringes, needles or other sharp instruments; or
- (b) any other waste which may cause infection to any person, animal or plant coming into contact with it arising from-
  - (i) medical, nursing, dental, veterinary, pharmaceutical or similar practice;
  - (ii) investigation, treatment, care, teaching or research; or
  - (iii) the collection of blood for transfusion;

**"commercial waste"** means waste from premises used wholly or mainly for the purpose of a trade, business, sport, recreation, entertainment or as local or central government offices, and excludes household waste, industrial waste or excavated waste from a mine or mine tailings impoundment as defined under the Mines and Minerals Act, save for that mine waste for which the Minister may prescribe a different categorisation for;

**"controlled waste"** includes the waste defined as household, industrial, commercial, clinical or hazardous waste in this Act;

**"Director"** means a person appointed under section 4 as Director;

**"Department"** means the Department to be established under section 3;

**"disposal"**, in relation to waste, means operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses;

**"harm"** means interference with the ecological systems of which the living organisms form part and in case of a living person includes harm, distress or annoyance to any of his senses or damage to his property;

**"hazardous waste"** means controlled waste which has the potential, even in low concentrations, to have significant adverse effect on public health or the environment on account of its inherent chemical and physical characteristics, such as toxic, ignitable, corrosive, carcinogenic or other properties;

**"household waste"** means waste from-

- (a) any building used wholly for the purposes of living accommodation;
- (b) a residential home;
- (c) premises forming part of a university or school or other educational establishment;

**"industrial waste"** means waste from any premises-

- (a) used for the purposes of or in connection with the provision to the public of transport services by land, air or water;
- (b) used for the purposes of or in connection with the supply to the public of gas, water or electricity or the provision of sewerage services;
- (c) used for the purposes of or in connection with the provision to the public of postal or

telecommunication services;

(d) forming part of a hospital or nursing home;

(e) that are subject to a licence to manufacture under the Industrial Development Act;

**"litter"** means any object or matter discarded or abandoned by the person in whose possession or control it was;

**"local authority"** means a city, town or district council or a land board;

**"local waste management plan"** means the plan drawn up by a local authority under section 9;

**"national waste management plan"** means the plan drawn up by the Director under section 9;

**"principal litter authority"** means a local authority designated as such under section 37;

**"recycling"** includes the reclamation of waste, recovery of materials, reprocessing of wastes, resource recovery and re-use of waste;

**"reclamation of waste"** means the collection, sorting and upgrading of waste materials to a usable standard;

**"recovery of materials"** means the recovery of materials from waste and their re-use for either the same purpose or for different purposes;

**"reprocessing of waste"** means the physical, chemical or biological conversion of waste materials to generate other usable materials;

**"resource recovery"** means the recovery of energy by means of-

(a) incineration of hazardous waste; and

(b) reclamation of water contaminated by waste;

**"treatment"** means subjecting waste to any process including resource recovery, re-use, reprocessing, reclaiming or recycling; and the term 'treat' shall be construed accordingly;

**"trans-boundary movement of waste"** means the importation and exportation of waste into or from Botswana or the transit of waste through Botswana;

**"waste"** includes the following substances and any combination thereof which are discarded by any person or are accumulated or stored by any person for the purpose of recycling-

(a) undesirable or superfluous by-products;

(b) residue or remainder of any process or activity;

(c) any gaseous, liquid or solid matter;

**"waste carrier"** means a person registered and licensed under Part V to transport waste;

**"waste disposal site"** means a site, registered under section 14, for the accumulation of waste to be disposed of or treated and includes a mobile or immobile waste treatment plant, waste storage or transfer facility or landfill site;

**"waste management"** means the collection, deposit, interim storage, transfer, transport, treatment and final disposal of waste or controlled waste; and 'manage controlled waste' shall be construed accordingly;

**"waste management facility"** means a waste disposal site, licensed under section 16, for the purpose of controlled waste management;

**"waste producer"** means a person who creates or produces controlled waste;

**"waste recycling plan"** means a plan drawn up by a local authority under 0;

## **PART II**

### ***Establishment of Department (ss 3-5)***

#### **3. Establishment of Department**

There shall be established, in accordance with the laws governing the public service, a Department to be known as the Department of Sanitation and Waste Management.

#### **4. Staff of Department**

(1) Subject to the laws governing the public service, there shall be appointed a Director and such other officers of the Department as may be deemed necessary.

(2) The Director shall, subject to the direction of the Minister, be responsible for the administration of the Department.

#### **5. Identity card of an officer**

The Minister shall cause each officer of the Department to be issued with a special identity card which shall be *prima facie* evidence of the appointment of such officer to the Department.

### **PART III**

#### **Functions of Department (ss 6-8)**

#### **6. Functions of Department**

Subject to the control of the Minister, the functions of the Department shall be to-

- (a) provide policy direction and leadership in all matters pertaining to sanitation and waste management;
- (b) enhance sectoral co-ordination by developing plans and programmes to guide the different sectors in the performance and discharge of their duties and closely monitor the work of the sectors;
- (c) develop effective communication flow between the stakeholders in sanitation and waste management and the public by instituting and maintaining a pro-active public awareness campaign;
- (d) ensure that implementation of sanitation and waste management projects is strategically designed to derive maximum benefit at minimum cost, accompanied by effective cost recovery policies;
- (e) provide reliable information for the support of both urban and rural sanitation and waste management development;
- (f) institute appropriate sanitary measures for the promotion of public health;
- (g) promote and co-ordinate human resources development and institutional capacity within the local authorities to effectively implement sanitation and waste management programmes;
- (h) promote and facilitate economic sustainability in sanitation and waste management;
- (i) train and assess for competence waste management officers and supervisors;
- (j) register persons who manage controlled waste;
- (k) register and license waste carriers, waste disposal sites and waste management facilities;
- (l) require and monitor the collection, disposal and treatment of controlled waste by local authorities and waste management industries in the private sector, in accordance with such standards as may be prescribed;
- (m) institute a consignment control system of controlled waste and approve waste carrying vehicles, packaging and labelling of waste carried on the vehicles;
- (n) monitor the trans-boundary movement of controlled waste;
- (o) make arrangements for hazardous waste, of a kind as may be specified, to be separated from other types of waste in its collection, transport, storage, treatment and disposal;
- (p) recommend to the Minister the appointment of committees to conduct technical research and other development studies for the purpose of assisting the Department realise its objectives;
- (q) restrict or prohibit waste management operations in or near rivers, ponds, lakes or underground water without adequate engineering works agreed in writing by the Director;
- (r) order the immediate closure of any existing waste management facility on the grounds of risk of pollution of the environment or harm to human, animal or plant life;

- (s) cause land to be inspected from time to time to detect whether the condition of any part of the land is likely to cause pollution of the environment or harm to human, animal or plant life and to take such other steps as are necessary in regard thereto; and
- (t) do all such other things as may be necessary to achieve the objectives of the Act.

#### **7. Annual Report**

The Director shall, on or before 31 March in each year, or by such other date as the Minister may allow, submit to the Minister a report on the activities of the Department in the preceding year.

#### **8. Qualifications of officers and managers**

(1) Officers of the Department and other persons monitoring or controlling waste management activities shall be fit and proper persons and shall hold such qualifications and such experience in the field of waste management as the Minister may, from time to time, direct.

(2) A person shall be considered a fit and proper person for the purposes of this Act if the person-

- (a) has not been convicted of an offence concerned with environmental issues; and
- (b) is technically competent to manage controlled waste.

(3) Any person who owns the means of waste management shall be required to have such financial resources as may be prescribed, to discharge his obligations under the licence granted:

Provided that the person who owns the means of waste management shall also be required to comply with the requirements of subsections (1) and (2), where such person is also engaged in the management thereof.

### **PART IV**

#### ***Waste Management Plans (ss 9-11)***

#### **9. Local and national waste management plans**

(1) To facilitate the drawing up of the national waste management plan under subsection (3) each local authority shall submit, in writing to the Director, at such intervals as he may require, a local waste management plan covering the area under its control and containing information on the-

- (a) kinds and quantities of controlled waste being generated and which the local authority expects will be generated in its area during the period specified in the plan;
- (b) waste disposal sites and public and private waste management facilities in its area at present and that are expected to be closed, upgraded or newly built during the period specified in the plan;
- (c) staff, equipment and other material used for operating the publicly owned sites and facilities at present and needed during the period specified;
- (d) kinds and quantities of controlled waste which the local authority expects to be brought for disposal into or taken for disposal out of the local authority's area during that period;
- (e) strategy the local authority has adopted to harmonise its activities with other local authorities on the management of the waste referred to in paragraph (d);
- (f) kinds and quantities of controlled waste which the local authority expects to manage by use of its own means or by use of means provided by the private sector, during that period;
- (g) methods by which, in a given period, the local authority intends to manage controlled waste and the local authority's prioritisation of the different methods of waste management for the given period of time;
- (h) estimated costs of the different methods of waste management mentioned in the plan, and how these costs are covered by tariffs, fees, or other means; and
- (i) efforts the local authority has undertaken and is going to undertake to reach full cost recovery within a given period of time.

(2) Upon the receipt of a local waste management plan in accordance with subsection

(1) the Director shall, prior to the plan being considered under subsection (3), consult the Ministry of Health on the plan.

(3) The Director shall, in conjunction with the Department of Water Affairs and other relevant Departments and based on the local waste management plan of each local authority, draw up a national waste management plan covering a given period of time, which plan shall be evaluated and revised at regular intervals.

#### **10. Waste recycling plan**

(1) A local authority shall prepare, as part of its local waste management plan, a waste recycling plan with respect to controlled waste in its area.

(2) The recycling plan shall include information with respect to the-

- (a) kind and quantity of controlled waste that could be recycled and that would therefore not be included in the waste collection and disposal chain of the area in question;
- (b) implication the recycling plan would have on the waste management services provided by the local authority;
- (c) technical, organisational, and financial initiatives the local authority will provide to encourage recycling;
- (d) estimated costs or savings attributable to the methods of dealing with waste in the manner provided by the plan; and
- (e) possibility of returning waste materials to the manufacturer in order to control pollution, conserve resources and prevent harm to human, animal or plant life.

(3) In the case of a second, third or consecutive recycling plan, the plan shall include information on the results of an evaluation of the previous plan with specific emphasis on how the aims and objectives set out previously were met and reasons given for deviating therefrom.

(4) When a local authority has determined the content of the plan, it shall submit a copy of the plan to the Director for approval and thereafter take steps to implement the approved plan and give adequate publicity of the plan in its area and the neighbouring local authorities.

(5) Each local authority shall keep a copy of the plan and any modifications thereto, available at all times at its offices for public inspection.

#### **11. Litter plan**

A local authority shall prepare, from time to time, and revise a statement of the steps to be taken by it to abate litter referred to as the "litter plan", as part of its local waste management plan.

### **PART V**

#### ***Registration and Licensing of Waste Carriers (ss 12-13)***

#### **12. Registration of waste carrier**

(1) The provisions of this section shall come into effect 12 months after the coming into operation of this Act.

(2) Subject to subsection (6), no person shall cause or effect the movement of controlled waste within Botswana or the trans-boundary movement of controlled waste without being registered as a waste carrier under the provisions of this section:

Provided that any person carrying on business as a waste carrier before the commencement of this Act or such other person as the Minister may determine on the recommendations of the Director, may, upon being registered, continue in such business or commence operations of such business pending the determination of the application for a licence under section 13.

(3) An application for registration in terms of subsection (2) shall be in the prescribed form and shall contain information relating to-

- (a) the type, volume, mix and constituents of the waste that is expected to be transported in the course of business annually;
- (b) the type, make and registration number of the vehicles which are used to carry the different kinds of waste; and

(c) details of the qualifications of each driver employed to drive the vehicles registered under paragraph (b), and of other persons employed thereto.

(4) The Director shall issue a waste carrier certificate to every person registered or exempted from registration as a waste carrier, which certificate shall be *prima facie* evidence of registration or of exemption from registration of the waste carrier as the case may be.

(5) Any waste carrier aggrieved by the refusal of the Director to register him may, within 28 days from the date of such refusal, appeal against the refusal to the Minister:

Provided that any person carrying on business as a waste carrier before the commencement of this Act, may continue in such business pending the decision of the Minister.

(6) The Minister may, by order, exempt certain persons from registering as waste carriers under this Act.

(7) A waste carrier shall, when requested by a police officer or an authorised officer, produce for inspection, a registration certificate issued under subsection (3).

(8) Any person who contravenes any of the provisions of this section, shall be guilty of an offence and be liable to a fine not exceeding P300 or to imprisonment for a term not exceeding two months or to both.

(9) Any person registered under this section may have such waste carrier registration revoked if such person is convicted of an offence under this Act.

### **13. Licensing of waste carriers**

(1) The provisions of this section shall come into effect 18 months after the coming into operation of this Act.

(2) Subject to subsections (3) and (12) no person shall cause or effect the movement of controlled waste within Botswana or the trans-boundary movement of controlled waste without a waste carrier licence issued under this section.

(3) Subsection (2) shall not apply to-

- (a) the transportation of controlled waste between different places within the same premises;
- (b) the transportation of controlled waste in transit from a country or territory outside Botswana to another and such waste is not deposited in Botswana, provided that the person carrying the waste is not resident in Botswana and holds the prescribed qualifications or other qualifications recognised by the Director to transport controlled waste; or
- (c) householders occasionally transporting their own household waste from their premises to the nearest collection or disposal point.

(4) An application for a waste carrier licence shall be in the prescribed form which form shall, where applicable, be subject to Regulations made in compliance with the Basel Convention, under section 45.

(5) An applicant for a licence under this section shall append to the completed application form-

- (a) the certificate issued under section 12(4); and
- (b) such other documentation as may be required by the Director.

(6) The Director may, by notice served on an applicant, require the applicant to furnish in writing, within such reasonable time as is specified in the notice, such further information in connection with the application as the Director may reasonably require.

(7) On application duly made, the Director may-

- (a) grant a waste carrier licence, on such conditions as he may determine; or
- (b) refuse to grant a waste carrier licence where the applicant-
  - (i) has failed to satisfy any of the requirements; or
  - (ii) has been convicted of a prescribed offence under this Act.

(8) The Director shall notify the applicant in writing of his decision with respect to the application.



(9) Subject to the conditions specified in the waste carrier licence, it shall remain in force for a period not exceeding two years.

(10) The renewal of the waste carrier licence may be granted by the Director, upon payment, by the applicant, of a prescribed fee and shall be valid for such period as may be specified therein.

(11) Any waste carrier aggrieved by the refusal of the Director to grant him a licence may, within 28 days from the date of such refusal, appeal against the refusal to the Minister:

Provided that any person carrying on business as a waste carrier before the commencement of this Act, may continue in such business pending the decision of the Minister.

(12) The Minister may, by order, exempt certain persons from being licensed as waste carriers under this Act.

(13) A waste carrier shall, when requested by a police officer or an authorised officer, produce for inspection, the licence issued under subsection (7).

(14) Any person who carries waste without a valid licence shall be guilty of an offence and be liable to a fine not exceeding P600, and for second and subsequent offence to a further fine not exceeding P200 for each day the offence continues.

(15) Any person licensed under this section may have such licence revoked if such person is convicted of an offence under this Act.

(16) In proceedings against any person for an offence under this section, it shall be a defence for that person to show-

- (a) that the controlled waste was transported in an emergency, notice of which was given within 48 hours of such transportation, to the local authority in whose area the emergency occurred;
- (b) that he neither knew nor had reasonable grounds for suspecting that what was being transported was controlled waste and that he took all such steps as it was reasonable to ascertain whether it was such waste; or
- (c) that he acted under instructions from his employer.

(17) In this section, "emergency" means, in relation to the transportation of any controlled waste, any circumstances in which, in order to avoid, remove or reduce any serious risk of harm to the environment or to human, animal or plant life, it is necessary for the waste to be transported from one place to another without a waste carrier licence issued under this Part.

## **PART VI**

### ***Registration of Waste Disposal Sites and Licensing of Waste Management Facilities (ss 14-28)***

#### **14. Registration of waste disposal sites**

(1) The provisions of this section shall come into effect 12 months after the coming into operation of this Act.

(2) Subject to subsection (6) no person shall operate a waste disposal site unless the waste disposal site is registered under this section.

(3) An application for registration in terms of subsection (2) shall be in the prescribed form and shall contain information relating to-

- (a) the type, volume, mix and constituents of the waste that is expected to be managed in the course of business annually;
- (b) the type, make and registration number of the vehicles and equipment which are to be used to carry and treat the different kinds of waste; and
- (c) the number, position and qualifications of the persons to be employed thereto.

(4) The Director shall issue a waste disposal site registration certificate to every person who registers or is exempted from registering a waste disposal site, which certificate shall be *prima facie* evidence of registration or of exemption from registration of the waste disposal site as the case may be.

(5) Any person aggrieved by the refusal of the Director to register the waste disposal site

may, within 28 days from the date of such refusal, appeal against the refusal to the Minister:

Provided that any person carrying on the business of waste disposal before the commencement of this Act, may continue in such business pending the decision of the Minister.

(6) The Minister may, by order, exempt any waste disposal site from being registered under this Act.

(7) A person managing a waste disposal site shall, when requested by a police officer or an authorised officer, produce for inspection, a registration certificate issued under subsection (4).

(8) Any person who contravenes any of the provisions of this section, shall be guilty of an offence and be liable to a fine not exceeding P300 or to imprisonment for a term not exceeding two months or to both.

#### **15. Unlicensed waste management facility prohibited**

(1) The provisions of this section shall come into effect 18 months after the coming into operation of this Act.

(2) Subject to section 24, no person shall manage controlled waste, on or upon any land or other premises, without a waste management facility licence issued under section 16.

#### **16. Licensing of waste management facility**

(1) An application for a waste management facility licence shall be made in the prescribed form.

(2) A waste management facility, for which a planning permission is required in pursuance of the Town and Country Planning Act, shall not be licensed under this Part unless such permission is in force.

(3) The Director shall grant a waste management facility licence if he is satisfied that-

- (a) the applicant is a fit and proper person in terms of section 8; and
- (b) the waste management facility will not cause pollution of the environment or harm to human, animal or plant life.

(4) Subject to the conditions specified in the waste management facility licence, it shall remain in force until such time as it is surrendered in accordance with the provisions of section 23.

(5) The renewal of the waste management facility licence may be granted by the Director upon payment of a prescribed fee and shall be valid for such period as may be specified therein.

#### **17. Consultation**

The Director shall consult the Department of Water Affairs or any other relevant Department before deciding on the merits of each application under this Part.

#### **18. Conditions of waste management facility licence**

(1) A waste management facility licence may include such conditions as the Director sees fit to specify therein or as may be prescribed and without prejudice to the generality of the foregoing, any such conditions may relate to-

- (a) the supervision of activities to which the waste management facility licence relates;
- (b) the precautions to be taken and works to be carried out in connection with the land or plant before the activities authorised by the waste management facility licence are begun or after such activities have ceased; or
- (c) where waste other than controlled waste is to be kept, treated or disposed of, to the keeping, treatment or disposal of that other waste.

(2) The conditions may require-

- (a) the licensee to carry out such other works notwithstanding that he is not required to carry out such works under any law; or
- (b) the licensee to meet the terms of a lease of land to be used for the waste management facility, if any, or such other lawful stipulations attached to the use of the land necessary to enable him to comply with any requirements imposed on him by the waste management facility licence.

## **19. Variation of conditions**

While a waste management facility licence issued by the Director is in force, the Director may-

- (a) on his own initiative, supported by sound technical justification, serve a notice on the licensee modifying the conditions specified in the waste management facility licence to any extent which in the opinion of the Director is desirable and is unlikely to require unreasonable expenditure by the licensee; or
- (b) on the application by the licensee, serve a notice on the licensee modifying the said conditions to the extent requested in the application.

## **20. Transfer of waste management facility licence**

(1) Without the approval of the Director, a transfer of a waste management facility licence shall be of no effect.

(2) An application to the Director for a transfer of a waste management facility licence shall be made in such form and include such information as may be prescribed.

(3) If, on such application, the Director is satisfied that the transferee is a fit and proper person and meets the requirements of the Act, the Director shall effect the transfer of the waste management facility licence to the transferee.

(4) The Director shall effect a transfer of a waste management facility licence by endorsing it with the name and other particulars of the transferee as the licensee from the date specified in the endorsement.

(5) Where the Director rejects any application made under this section, he shall communicate his rejection to the applicant in writing.

## **21. Suspension of waste management facility licence**

(1) The Director may suspend a waste management facility licence if-

- (a) the continuation of operations of the waste management facility would cause serious pollution or harm to human, animal or plant life;
- (b) the licensee fails to comply with a notice issued under section 19 which requires a condition to be complied with; or
- (c) the operator or licensee of the waste management facility contravenes the conditions of the licence.

(2) Upon the suspension of a licence in terms of subsection (1),-

- (a) operations of the waste management facility shall forthwith cease; and
- (b) the Director may require the licensee to comply with such directives as he may, in writing, specify, within a stated period.

(3) The Director may lift a suspension where he is satisfied that his directives under subsection (2) have been complied with.

## **22. Revocation of waste management facility licence**

(1) Where a waste management facility licence issued under this Part is in force, the Director may revoke it if it can be shown that-

- (a) the continuation of operations to which the waste management facility licence relates would-
  - (i) cause pollution of the environment or harm to human, animal or plant life, and the pollution, danger or detriment that may result cannot be avoided by modifying the conditions specified in the waste management facility licence; or
  - (ii) be so seriously detrimental to the amenities of the locality affected by such operations that the continuation of them ought not to be permitted;
- (b) the licensee has failed to comply with the directions of the Director issued under section 21(2); or
- (c) the licensee is convicted under this Act.

(2) Where the Director decides to revoke a waste management facility licence, he shall serve a notice on the licensee and the notice served shall state the date and time at which the

revocation in question is to take effect.

(3) The revocation of the waste management facility licence shall have the effect of ceasing activities specified in the licence but shall not affect the requirements or conditions imposed thereunder which are to continue to bind the licensee.

### **23. Surrender of waste management facility licence**

(1) Subject to any condition on the waste management facility licence, the licensee may surrender the waste management facility licence by-

- (a) giving notice to the Director of his intention to do so;
- (b) applying to the Director to obtain a certificate of surrender; and
- (c) complying with such conditions as the Director may determine.

(2) Where the application is in respect of a surrender of a portion of an area of a waste management facility covered by the waste management facility licence, the licensee shall-

- (a) specify the particular portion of the area of the waste management facility, covered by the licence, to be surrendered; and
- (b) if the application is approved, demarcate the area of the waste management facility in the prescribed manner.

(3) The surrender of any part of a waste management facility covered by the licence shall not be effective until the Director has-

- (a) consulted the Department of Water Affairs; and
- (b) issued a certificate of surrender in respect of that waste management facility.

(4) A surrender shall be without prejudice to any liabilities or obligations incurred by the licensee in relation to that waste management facility prior to the date of surrender and shall be subject to the licence holder's responsibility to ensure that there is no pollution for a minimum period of 30 years after the date of surrender.

(5) On the issue of a certificate of surrender the Director shall-

- (a) cancel such waste management facility licence, where the surrender is in respect of a waste management facility; or
- (b) amend the waste management facility licence, where the surrender is in respect of a portion of a waste management facility.

### **24. Exemption from holding licence**

A person managing controlled waste may, by notice published in the *Gazette*, be exempted from holding a waste management facility licence if-

- (a) the deposits of controlled waste being managed are small, innocuous or of a temporary nature;
- (b) adequate controls are provided under any other enactment; or
- (c) the person meets such other requirements as the Minister may prescribe.

### **25. Public Register of issued waste management facility licences**

(1) The Director shall-

- (a) maintain a register containing prescribed particulars of issued waste management facility licences which are in force;
- (b) secure that the register is open for inspection at its principal office by members of the public free of charge at all reasonable hours; and
- (c) afford a member of the public reasonable facilities for obtaining from him on payment of reasonable charges copies of entries in the register.

### **26. Closure of facility by order of Minister**

The Minister may by Order direct the closure of any waste management facility on the grounds of risk of pollution of the environment or harm to human, animal or plant life.

### **27. Appeals**

Any person aggrieved by a decision under this Part may, within thirty days of such decision, appeal against such decision to the Minister or to the court on a matter of law.

### **28. Offence and penalty**

(1) Any person who contravenes any of the provision of this Part shall be guilty of an offence and liable to a fine not exceeding P8 000 or to imprisonment for a term not exceeding seven years.

(2) It shall be a defence for a person charged with an offence under this Part to prove that he-

- (a) took care to inform himself from persons who were in a position to provide information and to verify such information, as to whether the management of waste to which the charge relates would be in contravention of this Part;
- (b) acted under instructions from his employer and did not know that the keeping, treating or disposal of waste was in contravention of this Part;
- (c) took all such steps as were reasonably open to him to ensure that the conditions of the waste management facility licence were complied with; or
- (d) performed the acts specified in the charge in an emergency in order to avoid danger to the public and that as soon as practicable they were reported to the local authority.

## **PART VII**

### ***Powers and Duties of Local Authorities (ss 29-33)***

#### **29. Collection of waste**

(1) A local authority shall, at a prescribed fee, arrange for the collection and disposal of all household waste in its area except waste which is situated at a place which in the opinion of the local authority is isolated, inaccessible or which is produced in such small quantities that the cost of collecting it would be high, or that the person who controls the waste is capable of collecting it.

(2) A person who arranges with the local authority for the collection of waste other than household waste shall pay a prescribed fee to the local authority for the collection and disposal of that waste.

(3) A local authority shall make such arrangements, without charge, for the emptying of privies serving one or more private dwellings in its area as it considers appropriate.

(4) Anything collected under arrangements made by a local authority under this section shall belong to the local authority.

#### **30. Receptacles for house hold waste**

(1) In pursuance of the requirement for a local authority to arrange for the collection of household waste in its area, under section 29, the local authority may, by a notice served on the occupier of the premises, require him to place the waste for collection in receptacles which shall be of a kind and number as may be specified in the notice.

(2) The kind and number of receptacles under subsection (1) to be used shall be such as are reasonable having regard to the locality and the type of waste concerned.

(3) A local authority may, at the request of any person, supply him, at a prescribed fee, with receptacles for collection of commercial or industrial waste.

#### **31. Disposal of waste**

(1) Each local authority shall deliver for disposal all waste which is collected by it to a licensed waste management facility with the exception of any household waste which the local authority may decide to retain for recycling.

(2) A local authority shall, in accordance with its local waste management plan-

- (a) ensure that adequate arrangements are made within its area for the management of all the controlled waste expected to arise within that area;
- (b) inspect land on which waste has been deposited to detect whether the state of such land is in a condition to cause pollution of the environment or harm to human, animal or plant life and to take steps as appear to it reasonable to avoid pollution of the environment and harm to human, animal or plant life.

#### **32. Removal of waste**

(1) If any controlled waste is deposited on any land or area of a local authority contrary

to the provisions of this Act, the local authority may serve a notice on the occupier of the land requiring him to-

- (a) remove the waste from the land within a period specified in the notice, which shall not be less than twenty one days beginning with the date of service of the notice;
- (b) take, within a stated period, such steps as are specified with a view to eliminating or reducing the consequences of the deposit of the waste; or
- (c) remove the waste as mentioned in paragraph (a) and to take such steps as are mentioned in paragraph (b) within such a period as aforesaid.

(2) If a person on whom a notice is served in pursuance of subsection (1) fails to comply with the notice, he shall be guilty of an offence and be liable to a fine not exceeding P500, and a further fine not exceeding P100 for every day during which the offence continues;

(3) A local authority may remove any type of waste that has been deposited on any land or take other steps if it appears to the local authority that-

- (a) in order to remove or prevent pollution of the environment or danger to human, animal or plant life it is necessary to remove the waste forthwith or to take such other steps with a view to eliminating or reducing the consequences of the deposit of it;
- (b) there is no occupier of the land in question; or
- (c) the occupier of the land neither made nor knowingly permitted the deposit of the waste.

(4) Where the local authority exercises power conferred on it by subsection (3), in respect of any land, it shall be entitled to recover the cost of doing so and of disposing of any waste removed in the exercise of the power-

- (a) in a case falling within paragraph (a) of that subsection, from the occupier of the land unless he proves that he neither made nor caused nor knowingly permitted the deposit in question;
- (b) in any other case, from the person who deposited or caused or knowingly permitted the deposit of any of the waste in question on the land, except such of the cost as the occupier or other person shows was incurred unnecessarily.

(5) Any waste removed by a local authority in pursuance of this section shall belong to the local authority and may be dealt with accordingly.

(6) Each local authority shall, at every quarter, submit to the Department a report of the waste collected in accordance with the provisions of this Part and such report shall include details of-

- (a) the persons from whom the waste has been collected;
- (b) the nature and type of waste;
- (c) the percentage of the waste that is recyclable; and
- (d) the amounts realised from the collection of the waste in relation to the costs.

### **33. Power to recycle waste**

A local authority may make arrangements with any waste management industry in the private sector to-

- (a) recycle waste;
- (b) use waste for the purpose of producing from it heat or electricity or both; or
- (c) collect and dispose of controlled waste or to either collect or dispose of such waste.

## **PART VIII**

### **Litter (ss 34-38)**

### **34. Prohibition to litter**

(1) A person shall not deposit in any place anything which may contribute to the defacement of any place by litter, except as authorised by law or done with the consent of the owner or occupier of that place.

(2) Subsection (1) applies to any public place and includes the following-

- (a) any highway or road; or
- (b) any place within the jurisdiction of a local council.

(3) Any person who contravenes this section commits an offence and is liable to a fine not exceeding P300 or to imprisonment for a term not exceeding two months or to both.

### **35. Abatement of litter**

A local authority may, with a purpose of promoting the abatement of litter, take such steps as it thinks appropriate.

### **36. Dumping of litter**

The Minister may make regulations with respect to the dumping of litter and in particular provide for-

- (a) the nature, design, number, provision and placing of containers and notices with respect to the dumping of litter;
- (b) the cleaning, clearing away and removal of litter and the emptying and maintenance of containers for the dumping of litter;
- (c) the facilities or methods of preventing the accumulation of litter; or
- (d) any other matter which he deems necessary or desirable to control and prevent the dumping of litter.

### **37. Principal litter authority**

(1) For the purposes of this Act all local authorities are hereby designated principal litter authorities.

(2) A principal litter authority shall undertake the cleaning of public roads and streets as identified by the Director, and the amenities of its area in the interests of public health.

(3) In determining the standard required for the cleaning of public roads and streets regard shall be had to the character and use of the land thereof and the measures practicable in the circumstances.

(4) A principal litter authority may, for the purpose of preventing accumulation of litter or refuse around any public place or road, issue notices imposing requirements on occupiers of premises in relation to such litter or refuse in accordance with this section.

### **38. Notices for depositing litter**

(1) Where an authorised officer of a local authority or a police officer finds a person whom he has reason to believe has committed an offence under this section, he may give that person a notice offering him the opportunity of discharging any liability for that offence by payment of a prescribed penalty.

(2) Where a person is given a notice under this section in respect of an offence believed to have been committed-

- (a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and
- (b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of fourteen days.

(3) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state-

- (a) the period during which, by virtue of subsection (2) proceedings will not be taken for the offence;
- (b) the amount of the fixed penalty; and
- (c) the person to whom and the address at which the fixed penalty may be paid.

(4) The form of notices under this section shall be such as the Minister may by regulations prescribe.

## **PART IX**

### ***Enforcement Powers (ss 39-44)***

### **39. Power to obtain information**

(1) The Director shall have power to obtain, from any person, such information including books, records, returns, reports and any other document, as the Director deems necessary to

enable him to carry out his functions under this Act.

(2) If so requested by the Director, a person shall provide such information as the Director may require and the Director may make copies of such information or take extracts therefrom.

(3) A person who gives information under this section, shall not give information which is false or misleading.

(4) Any information furnished, document or data produced under this section shall not be admissible in evidence against the person who provided it in any proceedings, other than for proceedings under section 42 which may be instituted against him.

(5) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and shall be liable to a fine not exceeding P500 or to imprisonment for a term not exceeding four months.

#### **40. Power of search and seizure**

(1) Subject to subsection (2) an authorised officer may enter any premises for the purpose of conducting a search and may seize any item during the course of an investigation in connection with the keeping, treating and disposal of waste.

(2) No authorised officer shall enter, conduct a search or seize any item in terms of subsection (1) unless such authorised officer has obtained-

- (a) the consent in writing of the owner or of the person in charge of the premises; or
- (b) a search warrant.

(3) An authorised officer shall carry at all times and, upon demand, present an identity card issued under section five.

(4) Any person who obstructs or interferes with any person in the performance of his functions under this section shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding four months or both.

#### **41. Right of entry**

(1) An authorised officer or any authorised officer of a local authority may enter upon any land, if it is considered that there is an immediate risk of serious pollution of the environment or harm to human, animal or plant life, and take with him such assistance and equipment as may be considered necessary for the purpose of carrying out any powers, duties or functions under this Act.

(2) Any person authorised under subsection (1) shall, on demand by the occupier of the land, produce an identity card.

#### **42. Civil liability**

Where any damage is caused by poisonous, noxious or polluting waste which has been deposited on any land, any person who deposited it, or caused or permitted it to be deposited is liable for the damage to the land except where the damage-

- (a) was due wholly to the fault of the person who suffered it; or
- (b) was suffered by a person who voluntarily accepted the risk thereof.

#### **43. Urgent provisional orders**

(1) Where a court is satisfied from information placed before it that circumstances relating to a particular matter, which matter is a subject of an investigation under this Act, render that matter urgent in that irreparable damage would be caused to animal, plant or human life by poisonous, noxious or polluting waste deposited on any land, if the matter were to be dealt with by the court at the proceedings in due course, the court may issue a provisional order-

- (a) prohibiting any person from depositing controlled waste on any land;
- (b) prohibiting any person from keeping, treating and disposing of hazardous waste without separating it from other types of waste;
- (c) ordering a person to remove any type of waste from any land;
- (d) preventing any potential environmental hazard; or
- (e) authorising the Department to take any action specified in the order.



- (2) A provisional order issued under subsection (1)-
- (a) may be amended or withdrawn by the court on application by the Director or by a person affected by such order;
  - (b) shall remain in force for such period or extended period as the court may from time to time determine;
  - (c) shall, unless withdrawn or lapsed, remain in force until the proceedings are finalised.

(3) A provisional order issued under subsection (1) and any amendment, withdrawal or extension thereof shall, where the court so directs, be published in the *Gazette* and in such other media as the court may deem appropriate.

#### **44. General penalty**

Save where otherwise specifically provided for, any person who is guilty of depositing waste on land which gives rise to the pollution of the environment or harm to human, animal or plant life, shall upon conviction, be liable to a fine not exceeding P14 000 or to imprisonment for a term not exceeding 10 years, or to both.

### **PART X**

#### ***Application of the Basel Convention (s 45)***

#### **45. Application of Basel Convention to regulations**

(1) The Basel Convention, set out in the Schedule, including any amendments, appendices and resolutions thereto, shall apply in regulating the trans-boundary movement of waste.

(2) Regulations may be made to-

- (a) make such provision as appears necessary or expedient for the carrying out of and giving effect to the Basel Convention; and
- (b) impose fees and provide for the recovery of any expenditure incurred in giving effect to the Basel Convention.

(3) Where the Minister considers it in the public interest to do so, and in particular where he considers it necessary or expedient to do so in order to facilitate compliance by Botswana with the Basel Convention, he may give directions, either generally or in a particular case, to all or any public officer, or to such person holding a licence granted under the provisions of this Act, as to the carrying out of their powers, functions or conditions of their licence, and any person to whom such directions are given shall comply therewith.

(4) Where the Minister deems it necessary so to do, he may cause any directive made under subsection (3) to be published by notice in the *Gazette*.

(5) Any person required to and who fails to comply with any directive made under subsection (3) shall be guilty of an offence and shall be liable to a fine not exceeding P1 400 or to imprisonment for a period not exceeding 12 months, or to both.

### **PART XI**

#### ***General (ss 46-55)***

#### **46. Public records**

(1) The Director shall maintain records of the-

- (a) registration of waste carriers and producers;
- (b) existing waste disposal sites;
- (c) licensing of waste management facilities;
- (d) applications for licensing of waste carriers and waste management facilities;
- (e) revocation or suspension of issued licences under this Act;
- (f) appeals that relate to the decisions made under this Act;
- (g) certificates of completion or training on competence in waste management; and
- (h) convictions of licensees under this Act.

(2) Records maintained under subsection (1) shall be open to inspection by members of the public during normal Government office hours and members of the public may, at their expense, be permitted to take copies thereof.

(3) The Director may, with the approval of the Minister, on the request by any person, exclude information contained under subsection (1) on the grounds of national security.

#### **47. Public register**

A local authority shall, as respects land in its area subject to contamination, maintain a register in the prescribed form which shall be open for public inspection.

#### **48. Interference with waste**

(1) Except with the Director's consent in writing, no person shall disturb-

- (a) anything deposited at a place prescribed for the deposit of waste by the Director or local authority; or
- (b) anything deposited in a receptacle for waste whether for public or private use.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding P500.

#### **49. Hazardous and clinical waste**

Hazardous or clinical waste, of a kind as may be specified by Order, shall be-

- (a) collected, disposed of or treated in such manner as the Minister may prescribe;
- (b) packed and clearly marked and labelled as may be prescribed; or
- (c) conveyed by road, rail or over water, on motor vehicles or vessels whose design construction shall be subject to the prescribed standards.

#### **50. Classification packaging and labelling**

The Minister may prescribe adequate classification, safe packaging and clear labelling of all controlled waste transported by road, rail, air or over water.

#### **51. Duty of care in respect of waste**

(1) Each local authority and any person who produces, carries, keeps, treats, or disposes of controlled waste shall take all measures applicable to him in the circumstances to prevent the escape of the waste from his control and to prevent contravention of any of the provision of this Act.

(2) Each person dealing with waste in terms of subsection (1) shall, at the point of consigning the waste to some other person, ensure that the person to whom the waste is being consigned is licensed to deal with waste in terms of this Act.

(3) Any person to whom waste has been consigned in terms of subsection (2) shall take all measures applicable to him to prevent the escape of the waste from his control and prevent the contravention of any of the provisions of this Act.

(4) Any person who contravenes this section shall be guilty of an offence and be liable to a fine of P1 000 and a further P500 for each day the contravention continues.

#### **52. Body corporate liability**

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, he, as well as the body corporate, shall be guilty of an offence and be liable in terms of this Act.

#### **53. Inspection of land**

(1) Where, on an inspection by an authorised officer, it appears to the authorised officer that the condition of any particular land is such that pollution of the environment or harm to human, animal or plant life is likely to be caused, it shall be the duty of the Director to direct the local authority in whose area the land is situated to do such works and take such steps, whether on the land affected or on adjacent land as appears to the Director to be reasonable to avoid such pollution or harm.

(2) Where it appears to the Director that the condition of the land is such that pollution of public water is likely to be caused due to the concentration or accumulation in and emission or discharge from the land of noxious liquids caused by deposits of controlled waste on the land, it shall be the duty of the Director to consult the Department of Water Affairs on the steps

considered necessary to take, to minimise or prevent pollution or harm to human, animal or plant life.

(3) The Minister may, by Order, require general or specific measures to be taken to prevent the pollution of public water.

#### **54. Confidentiality of information**

(1) Subject to the provisions of this Act, no person shall, directly or indirectly, disclose to unauthorised persons confidential information he may acquire in the course of his duty as an officer, agent or other employee of the Department.

(2) The duty of confidentiality imposed on the officer, agent or other employee under subsection (1) shall not apply where civil or criminal proceedings arise involving the Department.

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding P4 000 or to imprisonment for a term not exceeding 3 years or to both.

#### **55. Power to make regulations**

(1) The Minister may, after consulting the Minister responsible for Health, make regulations prescribing anything which under this Act is to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), Regulations may provide for the-

- (a) classification of waste;
- (b) recruitment, training and competence assessment of waste management officers;
- (c) registration of carriers;
- (d) registration of waste disposal sites;
- (e) registration of specified waste producers;
- (f) licensing of waste carriers;
- (g) licensing of waste management facilities;
- (h) seizure of carrier vehicles failing to comply with requirements of the Act;
- (i) trans-boundary movement of waste;
- (j) hazardous or clinical waste;
- (k) deposits on beverage containers and packaging;
- (l) landfill licensing;
- (m) duty of care of persons dealing with controlled waste;
- (n) collection, disposal and treatment of controlled waste;
- (o) recycling of waste;
- (p) powers and duties of local authorities in respect to waste;
- (q) packaging and labelling of waste;
- (r) litter prevention;
- (s) restriction or prohibition of waste management operations in or near a river, lake, pond or underground water;
- (t) submission of annual returns by the holders of any category of licence issued under the Act.
- (u) inspection of waste disposal sites, waste management facilities and vehicles licensed to carry waste; and
- (v) such other matters as may be necessary for the control of waste.

### **SCHEDULE**

## **BASEL CONVENTION ON THE CONTROL OF TRANS-BOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL**

*(Section 45)*

### **PREAMBLE**

The Parties to this Convention,

*Aware* of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

*Mindful* of the growing threat to human health and the environment posed by the increased generation and complexity, and transboundary movement of hazardous wastes and other wastes,

*Mindful also* that the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,

*Convinced* that States should take necessary measures to ensure that the management of hazardous wastes and other wastes including their transboundary movement and disposal is consistent with the protection of human health and the environment whatever the place of disposal,

*Noting* that States should ensure that the generator should carry out duties with regards to the transport and disposal of hazardous wastes and other wastes in a manner that is consistent with the protection of the environment, whatever the place of disposal,

*Fully recognising* that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory,

*Recognizing also* the increasing desire for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially developing countries,

*Convinced* that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated,

*Aware also* that transboundary movements of such wastes from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment, and under conditions in conformity with the provisions of this Convention,

*Considering* that enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement,

*Convinced* that States should take measures for the proper exchange of information on and control of the transboundary movement of hazardous wastes and other wastes from and to those States,

*Noting that* a number of international and regional agreements have addressed the issue of protection and preservation of the environment with regard to the transit of dangerous goods,

*Taking into account* the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNHWP) by decision 14/30 of 17 June 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), relevant recommendations, declarations, instruments and regulations adopted within the United Nations system and the work and studies done within other international and regional organisations,

*Mindful* of the spirit, principles, aims and functions of the World Charter for Nature adopted by the General Assembly of the United Nations at its thirty-seventh session (1982) as the rule of ethics in respect of the protection of the human environment and the conservation of natural resources,

*Affirming* that States are responsible for the fulfilment of their international obligations concerning the protection of human health and protection and preservation of the environment, and are liable in accordance with international law,

*Recognizing* that in the case of a material breach of the provisions of this Convention or any protocol thereto the relevant international law of treaties shall apply,

*Aware* of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes,

*Aware also* of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum,

*Concerned* about the problem of illegal transboundary traffic in hazardous wastes and other wastes,

*Taking into account also* the limited capabilities of the developing countries to manage hazardous wastes and other wastes,

*Recognizing* the need to promote the transfer of technology for the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the

spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on Promotion of the transfer of environmental protection technology,

*Recognizing also* that hazardous wastes and other wastes should be transported in accordance with relevant international conventions and recommendations,

*Convinced also* that the transboundary movement of hazardous wastes and other wastes should be permitted only when the transport and the ultimate disposal of such wastes is environmentally sound, and

*Determined* to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes,

HAVE AGREED AS FOLLOWS:

## **ARTICLE 1**

### ***Scope of the Convention***

1. The following wastes that are subject to transboundary movement shall be "hazardous wastes" for the purposes of this Convention:
  - (a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and
  - (b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be hazardous wastes by the domestic legislation of the Party of export, import or transit.
2. Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be "other wastes" for the purposes of this Convention.
3. Wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.
4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.

## **ARTICLE 2**

### ***Definitions***

For the purposes of this Convention:

1. "Wastes" are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;
2. "Management" means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;
3. "Transboundary movement" means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;
4. "Disposal" means any operation specified in Annex IV to this Convention;
5. "Approved site or facility" means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;
6. "Competent authority" means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in Article 6;
7. "Focal point" means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;
8. "Environmentally sound management of hazardous wastes or other wastes" means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;
9. "Area under the national jurisdiction of a State" means any land, marine area or air space within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;
10. "State of export" means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;
11. "State of import" means a Party to which a transboundary movement of hazardous wastes or other

- wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;
12. "State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;
  13. "States concerned" means Parties which are States of export or import, or transit States, whether or not Parties;
  14. "Person" means any natural or legal person;
  15. "Exporter" means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;
  16. "Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;
  17. "Carrier" means any person who carries out the transport of hazardous wastes or other wastes;
  18. "Generator" means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;
  19. "Disposer" means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;
  20. "Political and/or economic integration organisation" means an organisation constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;
  21. "Illegal traffic" means any transboundary movement of hazardous wastes or other wastes as specified in Article 9.

### **ARTICLE 3**

#### ***National Definitions of Hazardous Wastes***

1. Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.
2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.
3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.
4. Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.

### **ARTICLE 4**

#### ***General Obligations***

1.
  - (a) Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.
  - (b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.
  - (c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.
2. Each Party shall take the appropriate measures to:
  - (a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;
  - (b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;
  - (c) Ensure that persons involved in the management of hazardous wastes or other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;
  - (d) Ensure that the transboundary movement of hazardous wastes and other wastes is

- reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;
- (e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organisation that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting.
  - (f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;
  - (g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;
  - (h) Co-operate in activities with other Parties and interested organisations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.
3. The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.
  4. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.
  5. A Party shall not permit hazardous wastes or other wastes to be exported to a non Party or to be imported from a non-Party.
  6. The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement.
  7. Furthermore, each Party shall:
    - (a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations;
    - (b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognised international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognised practices;
    - (c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.
  8. Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.
  9. Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:
    - (a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or
    - (b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or
    - (c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this convention.
  10. The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.

11. Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order to better protect human health and the environment.
12. Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their Continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.
13. Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.

#### **ARTICLE 5**

##### ***Designation of Competent Authorities and Focal Point***

To facilitate the implementation of this Convention, the Parties shall:

1. Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.
2. Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.
3. Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.

#### **ARTICLE 6**

##### ***Transboundary Movement between Parties***

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex VA, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.
2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.
3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:
  - (a) The notifier has received the written consent of the State of import; and
  - (b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.
4. Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.
5. In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:
  - (a) By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply *mutatis mutandis* to the exporter



- and State of export, respectively;
- (b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply *mutatis mutandis* to the importer or disposer and State of import, respectively; or
  - (c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.
6. The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.
  7. The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.
  8. The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.
  9. The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.
  10. The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.
  11. Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.

#### **ARTICLE 7**

##### ***Transboundary Movement from a Party through States which are not Parties***

Paragraph 2 of Article 6 of the Convention shall apply *mutatis mutandis* to transboundary movement of hazardous wastes or other wastes from a Party through a State or States which are not Parties.

#### **ARTICLE 8**

##### ***Duty to Re-import***

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

#### **ARTICLE 9**

##### ***Illegal Traffic***

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:
  - (a) without notification pursuant to the provisions of this Convention to all States concerned; or
  - (b) without the consent pursuant to the provisions of this Convention of a State concerned; or
  - (c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or
  - (d) that does not conform in a material way with the documents; or

- (e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law, shall be deemed to be illegal traffic.
- 2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:
  - (a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,
  - (b) are otherwise disposed of in accordance with the provisions of this Convention, within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.
- 3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.
- 4. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.
- 5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.

#### **ARTICLE 10**

##### ***International Co-operation***

- 1. The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.
- 2. To this end, the Parties shall:
  - (a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;
  - (b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;
  - (c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;
  - (d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;
  - (e) Co-operate in developing appropriate technical guidelines and/or codes of practice.
- 3. The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs a, b, c and d of paragraph 2 of Article 4.
- 4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organisations is encouraged to promote, *inter alia*, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

## **ARTICLE 11**

### ***Bilateral, Multilateral and Regional Agreements***

1. Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.
2. Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

## **ARTICLE 12**

### ***Consultations on Liability***

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

## **ARTICLE 13**

### ***Transmission of Information***

1. The Parties shall, whenever it comes to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those states are immediately informed.
2. The Parties shall inform each other, through the Secretariat, of:
  - (a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;
  - (b) Changes in their national definition of hazardous wastes, pursuant to and, as soon as possible;
  - (c) Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;
  - (d) Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;
  - (e) Any other information required pursuant to paragraph 4 of this Article.
3. The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before the end of each calendar year, a report on the previous calendar year, containing the following information:
  - (a) Competent authorities and focal points that have been designated by them pursuant to Article 5;
  - (b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:
    - (i) The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;
    - (ii) The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;
    - (iii) Disposals which did not proceed as intended;
    - (iv) Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;
  - (c) Information on the measures adopted by them in implementation of this Convention;
  - (d) Information on available qualified statistics which have been compiled by them on the effects on human health and the environment of the generation, transportation and

- (e) disposal of hazardous wastes or other wastes;
  - (e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;
  - (f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;
  - (g) Information on disposal options operated within the area of their national jurisdiction;
  - (h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and
  - (i) Such other matters as the Conference of the Parties shall deem relevant.
4. The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considers that its environment may be affected by that transboundary movement has requested that this should be done.

#### **ARTICLE 14**

##### ***Financial Aspects***

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimisation of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.
2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

#### **ARTICLE 15**

##### ***Conference of the Parties***

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.
2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.
3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.
4. The Parties at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine environment in the context of this Convention.
5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:
  - (a) Promote the harmonization of appropriate policies, strategies and measures for minimising harm to human health and the environment by hazardous wastes and other wastes;
  - (b) Consider and adopt, as required, amendments to this Convention and its annexes, taking into consideration, *inter alia*, available scientific, technical, economic and environmental information;
  - (c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11;
  - (d) Consider and adopt protocols as required; and
  - (e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.
6. The United Nations, its specialized agencies, as well as any State not Party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body

or agency, whether national or international, governmental or nongovernmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

7. The Conference of the Parties shall undertake three years after the entry into force of this Convention, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information.

## **ARTICLE 16** **Secretariat**

1. The functions of the Secretariat shall be:
- (a) To arrange for and service meetings provided for in Articles 15 and 17;
  - (b) To prepare and transmit reports based upon information received in accordance with Articles 3, 4, 6, 11 and 13 as well as upon information derived from meetings of subsidiary bodies established under Article 15 as well as upon, as appropriate, information provided by relevant intergovernmental and non governmental entities;
  - (c) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;
  - (d) To ensure the necessary co-ordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its function;
  - (e) To communicate with Focal Points and Competent Authorities established by the Parties in accordance with Article 5 of this Convention;
  - (f) To compile information concerning authorized national sites and facilities of Parties available for the disposal of their hazardous wastes and other wastes and to circulate this information among Parties;
  - (g) To receive and convey information from and to Parties on:
    - sources of technical assistance and training;
    - available technical and scientific know-how;
    - sources of advice and expertise; and
    - availability of resourceswith a view to assisting them, upon request, in such areas as:
    - the handling of the notification system of this Convention;
    - the management of hazardous wastes and other wastes;
    - environmentally sound technologies relating to hazardous wastes and other wastes, such as low- and non-waste technology;
    - the assessment of disposal capabilities and sites;
    - the monitoring of hazardous wastes and other wastes; and
    - emergency responses;
  - (h) To provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them to examine a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes or other wastes with the relevant notification, and/or the fact that the proposed disposal facilities for hazardous wastes or other wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an

environmentally sound manner. Any such examination would not be at the expense of the Secretariat:

- (i) To assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;
  - (j) To co-operate with Parties and with relevant and competent international organisations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and
  - (k) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.
2. The Secretariat functions will be carried out on an interim basis by UNEP until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15.
  3. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organisations which have signified their willingness to carry out the Secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

#### **ARTICLE 17**

##### ***Amendment of the Convention***

1. Any Party may propose amendments to this Convention and any Party to a protocol may propose amendments to that protocol. Such amendments shall take due account, *inter alia*, of relevant scientific and technical considerations.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for information.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority of the Parties present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval, formal confirmation or acceptance.
4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that protocol present and voting at the meeting shall suffice for their adoption.
5. Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted them or by at least two thirds of the Parties to the protocol concerned who accepted them, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.
6. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

#### **ARTICLE 18**

##### ***Adoption and Amendment of Annexes***

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be and, unless expressly provided otherwise a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:
  - (a) Annexes to this Convention and its protocols shall be proposed and adopted according to the procedure laid down in Article 17, paragraphs 2, 3 and 4;
  - (b) Any Party that is unable to accept an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;
  - (c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned, which have not submitted a notification in accordance with the provision of subparagraph (b) above.
3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, *inter alia*, of relevant scientific and technical considerations.
4. If an additional annex or an amendment to an annex involves an amendment to this convention or to any protocol, the additional annex or amended annex shall not enter into force until such time the amendment to this Convention or to the protocol enters into force.

#### **ARTICLE 19**

##### ***Verification***

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

#### **ARTICLE 20**

##### ***Settlement of Disputes***

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the Parties to the dispute agree, shall be submitted to the international Court of Justice or to arbitration under the conditions set out in Annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.
3. When ratifying, accepting, approving, formally confirming or acceding to this Convention, or at any time thereafter, a State or political and/or economic integration organisation may declare that it recognises as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:
  - (a) submission of the dispute to the International Court of Justice; and/or
  - (b) arbitration in accordance with the procedures set out in Annex VI.

Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

#### **ARTICLE 21**

##### ***Signature***

This Convention shall be open for signature by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organisations, in Basel on 22 March 1989, at the Federal Department of Foreign Affairs of Switzerland in Berne from 23 March 1989 to 30 June 1989 and at United Nations Headquarters in New York from 1 July 1989 to 22 March 1990.

#### **ARTICLE 22**

##### ***Ratification, Acceptance, Formal Confirmation or Approval***

1. This Convention shall be subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to formal confirmation or approval by political and/or economic integration organisations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depositary.
2. Any organisation referred to in paragraph 1 above which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organisations, one or more of whose member States is a Party to the Convention, the organisation and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organisation and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of formal confirmation or approval, the organisations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organisations shall also inform the Depositary, who will inform the Parties of any substantial modification in the extent of their competence.

#### **ARTICLE 23**

##### ***Accession***

1. This Convention shall be open for accession by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organisations from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organisations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organisations shall also inform the Depositary of any substantial modification in the extent of their competence.
3. The provisions of Article 22, paragraph 2, shall apply to political and/or economic integration organisations which accede to this Convention.

#### **ARTICLE 24**

##### ***Right to Vote***

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention shall have one vote.
2. Political and/or economic integration organisations, in matters within their competence, in accordance with Article 22, paragraph 3, and Article 23, paragraph 2, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organisations shall not exercise their right to Vote if their member States exercise theirs, and vice versa.

#### **ARTICLE 25**

##### ***Entry into Force***

1. This Convention shall enter into force on the ninetieth day after the day of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.
2. For each State or political and/or economic integration organisation which ratifies, accepts, approves or formally confirms this Convention or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on the ninetieth day after the date of deposit by such State or political and/or economic integration organisation of its instrument of ratification, acceptance, approval, formal confirmation or accession.
3. For the purpose of paragraphs 1 and 2 above any instrument deposited by a political and/or integration organisation shall not be counted as additional to those deposited by member States of such organisation.

#### **ARTICLE 26**

##### ***Reservations and Declarations***

1. No reservation or exception may be made to this Convention.
2. Paragraph 1 of this Article does not preclude a State or political and/or economic integration organisation, when signing, ratifying, accepting, approving, formally confirming or acceding to this Convention, from making declarations or statements, however phrased or named, with a



view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.

#### **ARTICLE 27**

##### ***Withdrawal***

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.
2. Withdrawal shall be effective one year from receipt of notification by the Depository, or on such later date as may be specified in the notification.

#### **ARTICLE 28**

##### ***Depository***

The Secretary-General of the United Nations shall be the Depository of this Convention and of any protocol thereto.

#### **ARTICLE 29**

##### ***Authentic texts***

The original Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at ..... on the.....day of ..... 1989.

### **CHAPTER 72:01**

## **BOTSWANA POSTAL SERVICES**

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Act 22, 1989,  
S.I. 2, 1990.

**An Act to provide for the establishment of an organization to be known as the Botswana Postal Services for the provision, development, operation and management of postal services and for matters connected therewith or incidental thereto.**

*[Date of Commencement: 6th October, 1989]*

**PART I**  
***Preliminary (ss 1-2)***

**1. Short title and commencement**

This Act may be cited as the Botswana Postal Services Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

**"financial year"** means the year ending on 31st March in each year;

**"franking machine"** means a machine for the purpose of making impressions on postal articles to denote payment of postage and includes any meter and any franking or date stamping die used in connection with postal franking;

**"money order"** means a money order issued under this Act or by any postal authority for payment under this Act;

**"postage stamp"** or **"stamp"** means any piece of paper or other substance or material having thereon the stamp mark, or impression of any die, plate or other instrument made or used under this Act on by any postal authority for the purpose of denoting any postage or other postal fee;

**"postal article"** means any letter, post card, reply post-card, letter-card, newspaper, book, packet, sample packet or pattern or any parcel or other article when in course of transmission by post;

**"postal order"** means a postal order issued under this Act or by any postal authority for payment under this Act;

- (a) **"postal service"** means a service performed and facilities provided in connection with the collection, transmission and delivery of postal articles by whatever means of transportation from one place to another whether within or outside Botswana;

- (b) the issue of postage stamps and the use of franking machines; and
- (c) the issue or repayment of money orders or postal orders for the remittance of money through the Botswana Postal Services; and

"senior officer" means any employee of the Botswana Postal Services who holds a position which is so designated by the Board.

## **PART II**

### ***Establishment of Botswana Postal Services and Board of Management (ss 3-7)***

#### **3. Establishment of Botswana Postal Services**

(1) There is hereby established a commercial organization of the Government of Botswana to be known as the Botswana Postal Services, referred to in this Act as the "Post".

(2) Notwithstanding any other law to the contrary, all legal proceedings by or against the Government of Botswana and related to any commercial activity for or by the Post may be instituted by or against the Botswana Postal Services in its own name as representing the Government of Botswana, and the necessary service of process therein may be effected on the Director General of Botswana Postal Services appointed under section 10 of this Act.

(3) Sections 3 and 6 of the Civil Procedure (Actions by or Against Government or Public Officers) Act shall not apply to actions by or against the Botswana Postal Services.

#### **4. Establishment of Board**

(1) There is hereby established a Board of Management of the Botswana Postal Services (hereinafter referred to as the Board) which shall have such powers in relation to the overall management and control of the Post as may be specified in this Act.

(2) The Board shall consist of the following members appointed by the Minister-

- (a) the Chairman;
- (b) the Director General of the Botswana Postal Services appointed under section 10 who shall be an *ex-officio* member; and
- (c) not less than 5 nor more than 7 other persons who in the opinion of the Minister have knowledge and experience likely to contribute to the successful management of the Post.

(3) A person shall not be competent to be appointed or to act as a member of the Board if he-

- (a) is a member of the National Assembly;
- (b) is an employee of the Post;
- (c) has been declared insolvent or bankrupt under any law in any country and has not been discharged, or made a composition with his creditors and has not paid his debts in full.

#### **5. Resignation and removal from office**

(1) Any member of the Board, other than the Director General, may resign his membership of the Board by notice in writing to the Minister.

(2) A member of the Board may be removed from membership thereof by the Minister if-

- (a) any circumstances arise, which, if he were not a member, would cause him to be disqualified for appointment as a member of the Board under section 4(2);
- (b) he becomes of unsound mind;
- (c) he suspends payment of his debts or compounds with his creditors;
- (d) he is absent from 3 consecutive meetings of the Board without such reason as appears to the Minister to be sufficient;
- (e) he is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
- (f) is guilty of serious misconduct in relation to his duties as Chairman or member of the Board; or
- (g) in the case of a person possessed of professional qualifications, he is disqualified or suspended, otherwise than at his own request, from practising his profession in

Botswana, or in any other country, by order of any competent authority made in respect of him personally.

## **6. Tenure of office**

(1) A member of the Board, other than the Chairman and the Director General, shall hold office for such period not exceeding 4 years as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for reappointment:

Provided that in appointing members of the Board the Minister shall so specify such periods of appointment that the periods of appointment of not more than one-third of the members shall expire in any one year.

(2) The Chairman of the Board shall hold office as Chairman for a period of 3 years and on the expiration of such period shall be eligible for reappointment.

(3) The Board shall, once in every year, elect from among its members (other than the Director General) a Vice-Chairman for a period of one year.

(4) Subject to the provisions of this Act, where any member of the Board is incapacitated by absence from Botswana or illness or any other sufficient cause, from performing the duties of his office, the Minister shall appoint another person to hold office in his place until the incapacity of that person has terminated or until the term of office of such member expires, whichever first occurs.

## **7. Payment of members**

The Board shall pay to the members thereof such remuneration, fees and allowances for expenses as may be approved by the Minister.

### **PART III**

#### ***Meetings and Proceedings of Board (ss 8-9)***

## **8. Meetings**

(1) The Board shall meet for the discharge of its functions at such times and places as the Chairman may appoint, so however that the Board shall meet at intervals not exceeding 3 months.

(2) The Chairman, or in his absence the Vice-Chairman, may, and shall on the request in writing of not less than 2 members of the Board, call an extraordinary meeting of the Board at such time and place as he may determine.

(3) The Chairman, or in his absence the Vice-Chairman, shall preside at every meeting of the Board.

(4) In the absence of both the Chairman and the Vice-Chairman, the members present shall elect one of their number to preside at the meeting.

(5) The quorum at any meeting of the Board shall be not less than one half of the members of the Board:

Provided that the presence of the Director General shall not count towards the constitution of the quorum.

(6) All questions proposed at a meeting of the Board shall be determined by a majority of the members present and voting, and where the votes are equal, the Chairman or the person presiding shall have a second or casting vote:

Provided that the Director General shall not be entitled to vote unless the Board decides otherwise in any particular instance.

(7) Any member of the Board who has an interest, or whose spouse has an interest, in any company or undertaking with which the Board proposes to make a contract, or has an interest in any contract which the Board proposes to make, shall disclose the nature of his interest, and shall not vote or take any part in the proceedings of the Board relating to such contract.

(8) The Board may, and shall if the Minister so directs request the attendance of any person to act as adviser at a meeting of the Board, and that person while so attending shall have all the powers of a member except that he shall not vote on any question and his presence

at the meeting shall not count towards the constitution of a quorum.

(9) The validity of any act or proceeding of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of a member thereof.

(10) The Board may from time to time make standing orders providing for the regulation of-

- (a) meetings of the Board;
- (b) the conduct of its business and other operations in furtherance of the purposes of this Act; and
- (c) the duties of its officers, employees and agents.

#### **9. Signification of documents**

All documents made by, and all decisions of, the Board may be signified under the hand of the Chairman of the Board, the Director General or any member or senior officer of the Post generally or specially authorized in that behalf.

### **PART IV**

#### ***Officers, Employees and Agents of the Post (ss 10-11)***

#### **10. Appointment of officers and employees**

(1) The Post shall have a Director General who shall be appointed by the Minister upon such terms and conditions as may be determined by the Board.

(2) No person shall be appointed as Director General unless he is qualified by experience and training, and has demonstrated that he is competent, to manage and operate the business of the Post.

(3) The Director General shall, subject to such directions on matters of general policy as may be given by the Board, be charged with the direction of the business of the Post and of its administration and organization, and the control of the employees of the Post.

(4) The Director General may resign from office by notice in writing addressed to the Minister.

(5) The Director General may delegate to any senior officer of the Post the exercise of any power which he is authorized to exercise under this Act.

(6)(a) The Board shall, on consideration of the recommendations of the Director General, from time to time determine the staff deemed necessary for the proper discharge of the functions of the Post and the terms and conditions of employment.

(b) The appointment and dismissal of all persons to or from positions designated by the Board as held by senior officers shall be made by the Board on consideration of recommendations by the Director General.

(c) The appointment and dismissal of all other staff shall be made by the Director General or such senior officer as he may delegate to perform this function.

(7) The Board may-

- (a) grant pensions, gratuities or retiring allowances to any officer or employee and may require such officer or employee to contribute to any pension or contributory scheme;
- (b) for the benefit of its officers and employees, establish and make contributions to any pension or superannuation fund or medical fund; and
- (c) from time to time appoint and employ upon such terms and conditions as it may think fit such agents and contractors as it may deem necessary.

(8) Public officers from Ministries or other Departments may be transferred or seconded to the Post or may with the consent of their supervisors otherwise give assistance thereto.

(9) Officers and employees of the Post shall, in so far as it is not inconsistent with the provisions of this Act, be public officers.

(10) Officers and employees of the Post may become members of the appropriate Trade Union in accordance with the Trade Union legislation in force from time to time.

#### **11. Delegation to committee**

The Board may, by resolution, delegate to any committee appointed by it the exercise of

any of the powers which it is authorized by this Act to exercise, generally or in any particular case.

## **PART V**

### ***Functions, Powers and Duties of the Post (ss 12-16)***

#### **12. Functions and powers**

(1) The functions of the Post shall be-

- (a) to provide, develop, operate and manage postal services in an efficient and cost effective manner; and
- (b) to carry out such other operations as may appear to the Board to be conducive or incidental to the attainment of all or any of its objectives under this Act or any other law.

(2) The Post shall have all powers necessary or convenient for the performance of its functions and duties and, without prejudice to the generality thereof, shall have the power to-

- (a) acquire and use any kind of property, undertaking, right or privilege and dispose of the same to the Government, or to any person other than a member, officer or employee of the Post or any agent or contractor appointed or employed by the Post;
- (b) enter into agreements in connection with the operation of postal services;
- (c) supply, sell or market air postal services to all persons desiring such services;
- (d) enter into such contracts as may be necessary for the performance of its functions and duties;
- (e) construct or cause to be constructed such works, houses, offices and other buildings and structures as it may deem necessary or expedient for the performance of its functions and duties;
- (f) purchase, take on lease or otherwise acquire or construct or cause to be constructed such tools, appliances, machinery, plant and equipment as it may deem necessary or expedient for the performance of its functions and duties;
- (g) sell, exchange, lease, dispose of, turn to account or otherwise deal with any of its assets or any part thereof, whether movable or immovable, not required for its purposes:

Provided that the immovable property of the Post shall not be sold without the approval in writing of the Minister for the time being responsible for finance;

- (h) invest from time to time, in such manner as it may deem fit, such moneys held by it as may be surplus to its immediate requirements, subject to the approval in writing of the Minister for the time being responsible for finance;
- (i) insure with any company or person against any loss, damage, risk or liability which the Post may incur;
- (j) purchase or sell any materials and stores used in the performance of its functions;
- (k) sell, hire or otherwise dispose of any apparatus used in connection with Postal services; and
- (l) carry on any activity which is reasonably requisite or convenient for or in connection with the discharge of its functions under this Act.

#### **13. Exclusive privilege of the Post**

(1) The Post shall have the exclusive privilege of establishing and operating postal services in Botswana.

(2) Notwithstanding subsection (1) the Minister may, after consultation with the Board, by notice published in the Gazette, exempt services rendered by any person from the provisions of subsection (1) for such period as he may determine.

#### **14. Co-operation with authorities**

In the discharge of its functions the Post shall co-operate with local and other public authorities, including department and agencies of the Government, and shall consult with local authorities in matters of concern to the Post which affect their interest.

#### **15. Research and records**

With a view to facilitating present or future research or planning, the Post shall keep full and accurate records of all of its operations and shall have power to engage in research and to assist others to engage in research in respect of any matter relating to its functions, and to publish such records and the results of any such research.

#### **16. Power of Minister to give directions**

The Minister may, after consultation with the Board, give to the Board such directions of a general or specific character as to the exercise and performance of its powers in fulfilling its functions as are necessary as a matter of policy and as are not inconsistent with this Act or with the contractual or other legal obligations of the Post, and the Board shall give effect to any such directions.

### **PART VI** ***Finances (ss 17-21)***

#### **17. Principles of financial operations**

(1) It shall be the duty of the Post to conduct its affairs on sound commercial lines and, in particular, so carry out its functions under this Act and so prescribe the charges payable in respect of the provision by the Post of its postal services as to ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable return.

(2) In determining what constitutes a reasonable return, all pertinent economic and financial considerations shall be taken into account, which shall include but not be limited to the need for a net operating income in an amount sufficient-

- (a) to meet interest payments on borrowings;
- (b) to provide for repayments to be made each year in respect of loans incurred by the Post to the extent to which such repayments exceed the year's provision for depreciation charged to revenue account;
- (c) to provide a reasonable proportion of the funds needed for expanding the Post's activities and improving its services;
- (d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Board deems it necessary to establish such reserves; and
- (e) to make dividend payments to the Government in respect of its equity interest in the Post if and to the extent deemed appropriate by the Board, after consultation with the Minister, and the Minister for the time being responsible for finance, and having regard to the future financial requirements of the Post.

#### **18. Fixing of tariffs**

(1) The Board shall, with the approval of the Minister, which approval shall not be unreasonably withheld, prescribe the tariffs or other charges for which it provides postal services so as to ensure that it is able to comply with the provisions of section 17.

(2) The Board may prescribe different tariffs, charges or methods of charges for different classes or categories of service and for different areas or places.

(3) Notwithstanding subsection (1), the Board may, where special circumstances exist and with the consent of the Minister, which consent shall not be unreasonably withheld, enter into agreement with any person providing for special tariffs or charges on a commercial basis in respect of that agreement.

#### **19. Borrowing powers**

(1) In order to enable the Post to discharge its functions under this Act and to meet its obligations it may borrow, on such terms and in such currencies as may be agreed between it and any lender, such sums as it may require, subject to the approval of the Minister for the time being responsible for finance.

(2) The Post may charge its assets, undertakings, and revenues with the repayment of any money borrowed together with interest thereon and may issue debentures, bonds or other securities in order to secure the repayment of any money borrowed together with interest thereon and may do all other things necessary in connection with or incidental to such



borrowings as are authorized by this section, subject to the approval of the Minister for the time being responsible for finance.

## **20. Vesting of property in the Post**

(1) Any properties, assets, rights, debts, liabilities and obligations of the Government and the benefit and burden of all contracts made by or on behalf of the Government which are part of or concern or relate to postal services, may with the consent of the Board be transferred to and vest in the Post as hereinafter provided on terms and conditions agreed to by the Board.

(2) The Minister may from time to time, by notice published in the Gazette, designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government and contracts made by or on behalf of the Government which are part of, concern or relate to postal services, and as from the date specified in any such designation the properties, assets, rights, debts, liabilities and obligations and the benefit and burden of the contracts so designated shall vest in the Post.

(3)(a) For the purposes of this subsection "appropriate date" means, in respect of any loan agreement made between the Government and any person whereby money was or is to be borrowed by the Government and used for or in connection with postal services, the date of the vesting of such loan agreement in the Post by virtue of the foregoing provisions of this section.

(b) The Post shall pay to the Government, in such manner and on such date or dates as the Minister may, with the concurrence of the Board and the Minister for the time being responsible for finance, from time to time specify, any amount expended or advanced by the Government for or in connection with postal services comprising-

- (i) all amounts repaid in respect of capital or interest by the Government to any person before the appropriate date under any loan agreement to which paragraph (a) applies;
- (ii) all amounts disbursed or to be disbursed by the Government in repayment of any other loan raised or to be raised by the Government, and interest thereon, to the extent to which such loan has been or will be applied to postal services which, before the date specified in a designation pursuant to subsection (2), has not been offset by an amount or amounts credited to the Consolidated Fund for that purpose;
- (iii) amounts equal to the outstanding debit balance of any advances made by the Government and all costs incurred by the Government as a result of making such advances;
- (iv) any other amounts paid or to be paid by the Government which, before the date specified in a designation pursuant to subsection (2), has not been offset by an amount or amounts credited to the Consolidated Fund for that purpose.

(4) If, within one month from the date specified by the Minister under subsection (3)(b) for the payment of any amount payable by the Post to the Government under that subsection, the Post fails to pay such amount, it shall pay interest thereon as from the date specified as aforesaid at such rate or rates as the Minister may, with the concurrence of the Minister for the time being responsible for finance, from time to time determine.

## **21. Accounts and audit**

(1) The Post shall keep proper accounts and other records in relation to its operations, and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities (real and contingent) and income and expenditure of the Post, in a form which shall conform with the best commercial accounting standards, applicable to the provision of postal services.

(2) The accounts of the Post in respect of each financial year shall, within 4 months or such extended time after the end thereof as the Minister may direct, be audited by the Auditor-General or any auditor appointed by the Auditor-General (hereinafter referred to as "appointed auditor").

(3) The Auditor-General or any appointed auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which he deems it pertinent to comment, whether or not-

- (a) he has received all the information and explanations which, to the best of his knowledge and belief, were necessary for the performance of his duties as auditor;
- (b) the accounts and related records of the Post have been properly kept;
- (c) the Post has complied with all the financial provisions of this Act with which it is the duty of the Post to comply; and
- (d) the statement of accounts prepared by the Post was prepared on a basis consistent with that of the proceeding year and represents a true and fair view of the transactions and financial affairs of the Post.

(4) The report of the Auditor-General or the appointed auditor and a copy of the audited accounts shall, within 7 days of the completion thereof, be forwarded to the Minister and to the Board.

(5) The Minister shall, within 30 days of receiving the report and a copy of the audited accounts, lay such report and accounts before the National Assembly.

## **PART VII**

### **General (ss 22-28)**

#### **22. Annual report**

(1) The Board shall, within a period of 6 months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on the operations of the Botswana Postal Services during such year together with the auditor's report and the audited accounts as provided for in section 21, and the Board shall publish them in such manner as the Minister may specify.

(2) The Minister shall, within 30 days of his receiving the Board's report, lay such report before the National Assembly.

#### **23. Compulsory acquisition of land**

For the purposes of any written law for the time being in force relating to the compulsory acquisition of land for public purposes, the functions and operations of the Post shall be deemed to be public purposes.

#### **24. Resettlement measures**

If the operations of the Post make necessary resettlement of any person dwelling upon any communally owned land, the terms of such resettlement shall be subject to the agreement of the Government and of the local authorities of the area concerned.

#### **25. Compensation for loss or damage**

(1) In the exercise of its powers under this Act in relation to the execution of works or interference with property, the Post shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons who have sustained loss or damage by reason or in consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application for such compensation shall be determined by arbitration in accordance with the provisions of the Arbitration Act.

(2) For the purpose of such arbitration the parties shall be deemed to be parties to a submission in which the reference is to two arbitrators.

#### **26. Power to call for information**

The Minister may, for purposes associated with the administration of this Act, require the Board to provide him with estimates of the Post's future revenue and expenditure, and such other information relating to its activities and operations, including books of accounts, records, documents and agreements relating to postal services operated by the Post, as he may specify.

#### **27. Power of Board to make bye-laws**

The Board may, with the approval of the Minister, make bye-laws for any purpose

connected with its powers, functions and duties under this Act, and may impose penalties for breach of any such bye-laws.

## **28. Transitional provisions**

(1) Unless the contrary intention is indicated by the Board, every member of the staff of the former Department of Postal Services shall be deemed to have been duly appointed to an equivalent post under this Act.

(2) Nothing in this Act shall be taken to effect any alteration in the terms of a contract subsisting immediately before the commencement of this Act or to authorize the making of any such alteration without the consent in writing of all parties bound by the contract.

## **PART VIII**

### ***Transmission of Postal Articles (ss 29-42)***

## **29. Registration of postal articles**

(1) The sender of any postal article may, upon payment of the prescribed fee in addition to the ordinary postage, have that article registered and obtain a receipt for it; but no such registration or receipt shall confer on any person any right to compensation or impose upon any officer any liability for the loss of any such article or of the contents thereof:

Provided that the Director General may in an appropriate case, in his discretion pay compensation for the loss of any registered postal article or of the contents thereof.

(2) Any postal article containing coin, bank notes, stamps, precious metals, precious stones or other articles of a like nature which have an intrinsic or marketable value shall be registered and if not so registered shall be liable on delivery to a charge equal to double the amount of any deficiency between the postage paid and the correct charge had the article been registered at the time of posting. No compensation shall be paid or payable in respect of the loss of any postal article, required to be registered under this subsection, but which is not so registered at the time of posting.

## **30. When postal articles deemed to be in course of transmission or to be posted or delivered**

For the purposes of this Act-

- (a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed;
- (b) the placing of a postal article in a pillar box or other receptacle provided or the purpose by or with the approval of the Post, or the delivery of a postal article to an officer or other person authorized by the Director General to receive postal articles of that description, shall be deemed to be delivery to a post office;
- (c) the delivery of a postal article at the house or office of the person to whom the article is addressed or to his servant or agent or other responsible person or at the address specified on such article shall be deemed to be delivery to the person addressed; and
- (d) delivery into a private box or private bag shall be deemed to be personal delivery to the addressee.

## **31. Redirection and interception of postal articles**

(1) The redirection of any unopened postal article (other than a parcel) from one place to another may be effected free of charge provided the new address has been fully prepaid, but registered articles redirected by the public shall be subject in each case to a further fee for registration.

(2) Any redirected article which appears to the Director General to have been opened or tampered with shall be treated as if it were posted for the first time and shall be chargeable accordingly.

(3) Any article arrested or intercepted in transit through the post-

- (a) at the request of either the sender or the addressee thereof, shall be liable to an additional charge equal to the ordinary rate of postage from the place of the original

address to the place of the new address and any article which under the provisions of this Act may be returned to the sender thereof shall if reposted be liable again to postage;

- (b) for delivery to the sender or addressee at the office in which stoppage is effected, shall be liable to such special fee as may be prescribed.

(4) Nothing contained in subsection (3) shall require the Director General to arrest or intercept any postal article.

### **32. Articles deemed to be posted in contravention of Act**

A postal article received in a post office shall be deemed to have been posted in contravention of this Act if-

- (a) the postage stamps thereon have been previously used, obliterated or defaced;
- (b) any blasphemous, indecent, obscene, offensive or libellous matter appears on the outside thereof or any indecent or obscene matter is enclosed therein; or
- (c) it is posted or contains anything in fraud of or contrary to the provisions of this Act or any other law.

### **33. Articles to be sent by postmasters to Returned Letter Office for disposal**

Any postal article which is-

- (a) without address or bears an illegible address or is otherwise undeliverable;
- (b) refused by the person to whom it is addressed; or
- (c) posted or reasonably suspected to have been posted in contravention of this Act or any other law,

shall be sent to the Returned Letter Office of Botswana and dealt with as may be prescribed:

Provided that any article referred to in paragraph (a) or (b) which bears on the outside thereof the name and address of the sender may be returned to him.

### **34. Articles other than letters may be opened for examination**

(1) Any postal article, other than a letter, may be opened for examination in order to ascertain whether or not that article is entitled to transmission at the rate of postage prepaid thereon or has been posted in contravention of this Act.

(2) The decision of the Director General as to whether or not any postal article is a letter or any description of postal article shall be final.

### **35. Treatment of unclaimed letters in Returned Letter Office**

Any postal article originally posted within Botswana which is sent to the Returned Letter Office in accordance with section 33, or which is undelivered, shall be opened by an officer authorized by the Director General for that purpose and shall, unless it contains any valuable or saleable enclosure or has in the opinion of the Director General been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, be returned to the sender thereof if his name and address are known, and may, if the sender refuses to receive it or if his name and address are not known, be sold or destroyed.

### **36. Unclaimed articles of value and articles posted in contravention of Act**

(1) Any postal article opened under the provisions of this Act which contains any valuable or saleable enclosure shall be safely kept and a record thereof and of its contents shall be made and preserved.

(2) The Director General shall, unless any such postal article or the contents thereof have in his opinion been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, cause notice of his possession of that article and of the contents thereof to be sent to the person to whom it is addressed or, if he cannot be found, to the sender thereof if he can be found.

(3) The Director General shall, upon application by the person to whom the notice has been sent, cause such postal article and its contents to be delivered to such person upon payment of all charges due thereon.

(4) If no application under subsection (3) is made within 3 months after the sending of a

notice under subsection (2), or if the postal article in question or the contents thereof has in the opinion of the Director General been posted in contravention of this Act or with intent to evade payment of any charge properly payable thereon, such article and its contents shall (without affecting the liability to any penalty or punishment to which the sender may be subject), be destroyed, sold or otherwise disposed of as the Director General may direct.

(5) The proceeds of the sale of any postal article or the contents thereof, as well as any such contents consisting of money or any order or security for money, shall be paid into and form part of the postal revenue.

(6) Any such order or security for money shall for the purpose of procuring payment be deemed to be the property of the Director General.

#### **37. Sender of undelivered article liable for all charges due**

(1) The sender of an undelivered postal article shall on demand pay all charges due thereon, and shall, in the event of his refusal to pay such charges, be guilty of an offence and liable to a fine of P10,00.

(2) This section shall not be construed as releasing the person to whom a postal article is originally addressed from liability to pay the charges due thereon if such a postal article is delivered to him.

#### **38. Delay, return to sender or delivery to other than addressee of article prohibited**

Save as expressly provided in this Act, no postal article shall be delayed in transmission or returned to the sender or be delivered to any person not named in the address thereof except with the consent in writing of the addressee or on the special authority of the Director General.

#### **39. Undelivered articles of no value and newspapers may be destroyed**

Notwithstanding anything to the contrary contained in section 35 or 38 an undelivered postal article, which appears to be of no appreciable value or importance, and an undelivered newspaper may, after retention for the period prescribed, be sold, destroyed or otherwise disposed of as the Director General may direct.

#### **40. Articles addressed to insolvent person**

When the estate of any person has been sequestrated by a competent court in Botswana, the Director General shall cause all postal articles addressed to such person to be delivered to the trustee in such insolvent estate or, if no trustee has been appointed, to the Master of the High Court.

#### **41. Articles addressed to deceased person**

Postal articles addressed to a deceased person may be delivered to the executor or administrator of such deceased person on the production of letters of administration or, pending production of letters of administration, at the address indicated thereon.

#### **42. Articles addressed to persons conducting lottery or dealing in indecent or obscene matter**

When the Director General is satisfied by any advertisement, letter, circular or other documentary evidence that any person is conducting or assisting as agent or otherwise in conducting an illegal lottery, or is dealing in indecent or obscene matter, and is using the services of the Post for the purpose thereof, the Director General may detain or delay all postal articles addressed to such person or his agent or representative without the name of any person appearing thereon, and all such postal articles may be opened and returned to the senders thereof or otherwise disposed of as the Director General may deem fit.

### **PART IX**

#### ***Remittance of Money through Post Office (ss 43-45)***

#### **43. Remittance of money through the Post**

Any person may remit money through the Post to any other person whether in or outside Botswana at such rates of commission as may be prescribed and the Director General may authorize any office in the Post to issue and pay money orders, postal orders or any other document prescribed for the purpose of remitting money.

**44. Director General may refuse to issue or pay money orders, etc, to certain persons**

The Director General may refuse to issue or pay a money order, postal order or other document to a person to whom the provisions of section 42 apply and, where payment of any such order or other document is refused, such order may, if it was issued in Botswana, be returned to the person to whom it was originally issued, or otherwise disposed of as the Director General may deem fit, or, if it was issued outside Botswana, the amount thereof shall be returned to the postal authority of the country in which it was issued.

**45. Money orders, etc., to be deemed bank notes**

(1) A money order, postal order or other document issued under section 43 shall be deemed to be a bank note or any order for the payment of money and a valuable security within the meaning of any law relating to forgery or theft.

(2) An unissued postal order shall be deemed to be public money.

**PART X**

***Offences and Penalties (ss 46-61)***

**46. Forging stamps, dies, etc.**

Any person who without due authority or lawful excuse, the proof of which shall lie upon him-

- (a) makes, alters, imitates or imports or assists in making, altering, imitating or importing any postage stamp, date stamp, card, envelope, wrapper cover or any money order, postal order, postal draft or savings bank warrant or any other warrant or order for the payment of money through the Post, or acknowledgement of deposit or any form or paper similar to that used or made under the authority or for the purposes of this Act or by any postal authority, or uses, issues, offers, exposes for sale, sells, deals in, sends by post or disposes of or has in his custody or possession any such postage stamp, date stamp, card, envelope, wrapper, cover, money order, postal order, postal draft, savings bank warrant or any other warrant or order, acknowledgement of deposit, form or paper, knowing it to have been made or altered or to be an imitation contrary to this section;
- (b) engraves or in any manner makes upon any plate or material any stamp, mark, figure or device in imitation of or resembling any stamp, mark, figure or device used or made for the purposes of this Act or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any plate or material so engraved or made;
- (c) makes or assists in making or has in his custody or possession any mould, frame or other instrument having thereon any word, letter, figure, mark, line or device peculiar to paper provided, used or made for any postage stamp or for any other purpose of this Act or by any postal authority;
- (d) makes or assists in making or has in his custody or possession any paper in the substance of which appear any word, letter, figure, mark, line or device peculiar to paper provided, used or made for any postage stamp or for any other purpose of this Act or by any postal authority, or makes, purchases, sells, disposes of or receives or has in his custody or possession any paper provided or made for the purposes of being used for any postage stamp or for any other purposes of this Act or by any postal authority before the same has been issued for public use;
- (e) makes use of any stamp, dye, plate or paper engraved or made for the purposes of this Act or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any paper or material whatever bearing an impression or mark of any such stamp, dye, plate or paper; or
- (f) makes on any envelope, wrapper, card, form or paper any mark in imitation of or similar to or purporting to be any official stamp or mark used for the purposes of this Act or by any postal authority, or any word, letter, device or mark which signifies or

implies or may reasonably be regarded as signifying or implying that any article bearing such word, letter, device or mark has been or is entitled to be sent through the post, shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 5 years, and any stamp, dye, plate, paper, instrument or other material found in the possession of such person in contravention of this section shall be seized and forfeited to the State.

#### **47. Removing marks from stamps, etc., with intent to defraud**

(1) Any person who, with intent to defraud-

- (a) removes from an article sent by Post or from a document used for the purposes of this Act any stamp which has been affixed thereon, or wilfully removes, either actually or apparently, from any stamp which has been previously used, any mark or impression which has been made thereon at any post office, or knowingly utters, issues or uses any stamp or any part thereof which has been so removed or from which any such mark or impression has been removed;
- (b) erases, cuts, scrapes, defaces, obliterates or otherwise discharges or removes from, either actually or apparently, or in any manner adds to or alters any mark or impression upon, a money order, postal order, postal draft, savings bank warrant, or other order or warrant, or acknowledgement of deposit, paper or other material provided, used or made for the purposes of this Act or by any postal authority;
- (c) makes, does or practises or is concerned in any other act, contrivance or device for which no specific penalty is provided, or attempts unlawfully to evade payment of any of the rates, fees or duties payable under this Act,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) For the purposes of this Part the sender of a postal article shall, unless the contrary is proved, be deemed to be the person by whom any postage stamp upon that article was affixed.

(3) In any proceedings in respect of an offence under this section the burden of proving an absence of intent to defraud shall lie on the accused.

#### **48. Offence in connection with carriage and delivery of mail**

Any person authorised to receive or in any way to handle mail who-

- (a) negligently loses or wilfully detains, delays, misdelivers or omits to dispatch any mail (whether or not the same is afterwards recovered or delivered) or communicates or divulges the contents of any postal article;
- (b) while in charge of any mail, leaves it, or suffers any person, not being the guard or person employed for that purpose, to travel in the place appointed for the guard in or upon any conveyance carrying the mail, or to travel in or upon any such conveyance not authorized to carry passengers or upon any horse or other animal conveying that mail;
- (c) is guilty of carelessness, negligence or any misconduct where the safety of any mail is endangered;
- (d) while in charge of any mail is intoxicated or loiters or wilfully misspends or loses time so as to retard the arrival of the mail at its proper destination within the time fixed for its arrival, or does not use due care and diligence to safely convey the mail at the due rate of speed;
- (e) gives false information of any assault or attempt at robbery upon him; or
- (f) without due authority, collects, receives, conveys or delivers any postal article otherwise than in the ordinary course of post,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

#### **49. Fraudulent, injurious and offensive practices in connection with postal articles and premises**

- (1) Any person who-
- (a) with intent to defraud, puts into any post office anything purporting to be a postal article within the exemptions specified in this Act, or any postal article purporting to belong to a class, in respect of which a lower rate of postage or no postage is chargeable, or insufficiently stamped which if sent alone would be liable to postage;
  - (b) with intent to defraud, puts into any post office any article in or upon or with which there is any communication, intelligence, character, figure, number, mark, matter or thing not allowed by this Act or by any other law, or wilfully subscribes on the outside of any posted article or otherwise a false statement of the contents thereof;
  - (c) puts into any post office any article in which or with which or upon which there is any indecent or obscene matter, or anything of a profane, defamatory or grossly offensive character;
  - (d) without due authority, the proof of which shall lie upon him, places or paints anything whatsoever upon, or wilfully injures, disfigures or tampers with any post office or any card, notice or other property of or used by or on behalf of the post, or commits a nuisance on or against any post office or against or upon such card, notice or other property;
  - (e) detains, secretes or keeps any mail or postal article which ought to have been delivered to another person or which has been found by himself or by any other person; or
  - (f) by false representation induces any officer to deliver to him or to any other person any postal article not addressed to or intended for either of them,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months, without prejudice to any right the Director General may have of proceeding civilly against any person convicted under paragraph (d) for compensation for such damage as may have been caused by him.

(2) In any proceedings in respect of any offence under paragraph (1)(a) or (b) the burden of proving an absence of intent to defraud shall lie on the accused.

#### **50. Placing of dangerous or noxious articles and stoppage of mail**

- (1) Any person who-
- (a) sends in or with any postal article or puts into or against any post office any fire, match or light or any explosive, dangerous, filthy, noxious or deleterious matter or thing or any matter or thing which is likely to injure or damage any post office, person or mail;
  - (b) steals any mail or steals from any mail or post office or from the possession or custody of any officer, or for any purpose embezzles or fraudulently secretes or destroys any postal article or any of the contents thereof;
  - (c) receives any mail or postal article or any of the contents thereof knowing the same to have been stolen, embezzled or fraudulently secreted or to have been sent or intended to be sent by post; or
  - (d) stops any mail with intent to rob or search such mail, shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 7 years.

(2) The Board may make bye-laws exempting from the provisions of this section noxious or deleterious matter sent in the interests of public health or justice in accordance with such requirements as it may prescribe.

#### **51. Tampering with mail**

Any officer who otherwise than in pursuance of his duty opens or tampers with or wilfully destroys, makes away with or secretes or suffers to be opened or tampered with, destroyed, made away with or secreted any mail or postal article, and any person who opens or tampers with or wilfully destroys, makes away with or secretes any mail shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 5 years.

#### **52. Wilfully obstructing or delaying mail**



Any person who wilfully interferes with the conveyance of any mail or through whose act or neglect the conveyance of any mail is interfered with shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

**53. Wilfully opening or delaying postal articles**

(1) Any person, not being an officer, who wilfully opens any postal article which he knows ought to have been delivered to another person, or knowingly does any act or thing whereby the due delivery of that article to such other person is prevented, obstructed or delayed, shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) Nothing in this section contained shall apply to any person who does any act to which this section applies where that person is the parent or in the position of parent or guardian of the addressee and the addressee is a minor under 16 years of age or a ward.

(3) No prosecution under this section shall be instituted except by the direction or with the consent of the Director General.

**54. Unauthorized use of words "Post Office", "Botswana Mail", etc.**

Any person who, without the authority of the Director General, the proof of which shall lie upon him-

- (a) places or maintains or suffers to be placed or maintained, or to remain in, on or near any place belonging to him or under his control the word "Post Office" or any other word or mark which may imply or may give reasonable cause for believing that place to be a post office; or
- (a) places or maintains or permits to be placed or maintained or to remain on any vehicle or vessel the words "Botswana Mail" or any other word or mark which may imply or may give reasonable cause for believing that such vehicle or vessel is used for the conveyance of mail,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

**55. Unauthorized entry of premises, obstruction of business, and refusal to comply with regulations**

(1) Any person, not being an officer, who without the express permission of the Director General or of an officer having authority to give permission, enters any part of a post office in which is carried on any of the operations in respect of which an oath of secrecy is required to be taken by officers, or whilst in any post office, wilfully obstructs the course of business of the post or behaves in a disorderly manner or who wilfully obstructs, hinders or delays any officer in the execution of his duty, or who fails to comply with any regulations which have been issued, or by-laws to secure the comfort and convenience of the public or the safety of the premises, and which state that failure to comply therewith shall be an offence, shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) An officer may require any person committing an offence under this section to leave the post office in question immediately, and any such person who fails to comply with such a requirement may be removed by any officer, and any member of the police force shall on demand by an officer remove or assist in removing any such person.

**56. Frauds in connection with money orders, etc.**

Any person who with fraudulent intent issues, re-issues, utters or presents to any person or at any post office any money order, postal order, savings bank warrant or other warrant, order or document for the remittance, payment, collection or deposit of money through or with the Post, or transmits through the Post or otherwise any letter or other communication concerning any money order, postal order, savings bank warrant or other warrant, order or document for the remittance, payment, collection or deposit of money through or with the Post, shall be guilty of an offence and on conviction there of shall be liable to a fine of P2 000,00 and to imprisonment for 5 years, and in any proceedings in respect of any offence under this section

the burden of proving an absence of fraudulent intent shall lie on the accused.

**57. Personating officers of the Post with fraudulent intent**

Any person who, with fraudulent intent, personates or represents himself to be an officer of the Post shall be guilty of an offence and shall be liable to a fine of P800,00 and to imprisonment for 2 years.

**58. False declaration**

Any person who in any declaration prescribed by this Act makes a false statement knowing the same to be false shall be guilty of an offence and shall be liable to a fine of P400,00 and to imprisonment for 6 months.

**59. Attempting to commit or procuring commission of offences**

Any person who attempts to commit any offence under this Act, or solicits, or authorizes or endeavours to employ, cause, procure, aid, abet, incite or counsel any other person to do anything the doing whereof is an offence under this Act, shall be guilty of an offence and liable to the same punishment as if he actually committed the offence.

**60. In criminal proceedings, etc, property in postal articles, money, money orders, etc, may be laid in Director-General**

In any prosecution for any crime or any offence committed in respect of the Post or of any mail or any property, moneys, money order, postal order or other document authorized to be used for the purpose of remitting, paying, collecting or depositing money through or with the Post, or with respect to any act, deed, matter or thing which has been done or committed with any malicious, injurious or fraudulent intent relating to or concerning the Post or any such mail, property, moneys, money order, postal order or other document, it shall be sufficient-

- (a) to allege that any such mail, property, moneys, money order, postal order or other document belongs to or is in the lawful possession of the Director General and to put the same in evidence, and it shall not be necessary to allege or prove the same to be any value;
- (b) to allege that any such act, deed, matter or thing was done or committed with intent to injure or defraud the Director General without setting forth his or any other name, addition or description whatsoever; and
- (c) if the offender be an officer, to allege that the offender was an officer of the Post at the time of the committing of the offence without stating the nature or particulars of his employment.

**61. Evidence: acceptance of official marks**

In any proceedings for the recovery of any sum payable under this Act in respect of a postal article-

- (a) the official stamp or mark thereupon denoting the sum due shall be *prima facie* evidence of the liability of that postal article to the charge specified thereon; and
- (b) the production of any such postal article having thereon a post office stamp or mark denoting that the article has been refused or that the person to whom the same is addressed is dead or could not be found shall be *prima facie* evidence of the fact denoted.

**PART XI**

**Miscellaneous (ss 62-65)**

**62. Limitation of liability**

(1) Save as otherwise provided in this Act, no liability shall rest on any member of the Board or the Director General or any officer or employee of the Post by reason of any error, default, delay, omission, damage, destruction, non-delivery or loss in respect of any postal article unless it is established that it was due to the negligence or malfeasance of the said member, officer or employee.

(2) The *bona fide* payment of any sum of money under the provisions of this Act shall, to whomever made, discharge the Post from all liability in respect of such payment.

(3) If any person by fraudulent means obtains payment of any sum credited to a depositor's savings bank account, no liability shall rest on the Post, but the Director General may at his absolute discretion make good to the depositor any loss sustained or any part thereof.

### **63. Detention of postal articles**

(1) Any postal article which is reasonably suspected of containing anything which will afford evidence of the commission of a criminal offence or reasonably suspected of being sent in order to further the commission of a criminal offence or to enable the detection of a criminal offence to be concealed shall, on the written request of a police officer of or above rank of Senior Inspector, be detained by the officer in charge of any post office in which it is or through which it passes and the Director General shall, if authorized thereto by such police officer, cause such postal article to be handed over to the said police officer.

(2) On the occurrence of a public emergency or in the interests of public safety or tranquility, the President may by order in writing addressed to the Director General direct that any postal article or class or description of postal article in the course of transmission by post within Botswana be intercepted or detained or be delivered to any officer mentioned in the order or disposed of in any other manner.

(3) A certificate signed by the President shall be conclusive proof of the existence of a public emergency or that any act done under subsection (2) was in the interests of public safety or tranquility.

### **64. Regulations**

The Minister may, after consultation with the Board, make regulations generally for carrying into effect the provisions of this Act and prescribing anything that under this Act requires to be prescribed.

### **65. Repeal and savings**

(1) The Post Office Act, 1980 is hereby repealed.

(2) Notwithstanding the repeal of the Post Office Act, 1980 any statutory instruments made or any licences issued and in force immediately prior to the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, and until they are revoked or amended, continue in force as if made or issued under the corresponding provisions of this Act.

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