

**CHAPTER 65:07**  
**ENVIRONMENTAL IMPACT ASSESSMENT**

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**An Act to provide for environmental impact assessment to be used to assess the potential effects of planned developmental activities; to determine and to provide mitigation measures for effects of such activities as may have a significant adverse impact on the environment; to put in place a monitoring process and evaluation of the environmental impacts of implemented activities; and to provide for matters incidental to the foregoing.**

[Date of Commencement: 27th May, 2005]

## **PART I**

### **Preliminary (ss 1-5)**

#### **1. Short title**

This Act may be cited as the Environmental Impact Assessment Act.

#### **2. Interpretation**

In this Act, unless the context otherwise requires-

**"activity"** includes a project, programme or policy;

**"authorisation"** means a document issued under this Act, where the environmental impact of an activity is sufficiently described by the application, scoping exercise or an environmental impact statement, and the proposed mitigation for the impact are acceptable;

**"competent authority"**, in relation to an activity under this Act, means the Department;

**"consultant"** has the meaning assigned to it under section 11;

**"Department"** means the Department of Environment and Conservation;

**"developer"** means an applicant authorised to undertake an activity;

**"Director"** means the Director of the Department of Environment and Conservation;

**"environment"** includes the physical, ecological, archaeological, aesthetic, cultural, economic, institutional, human health and social aspects of the surroundings of a person;

**"environmental audit"** means work done to identify and evaluate compliance of the statement and the residual environmental impact of an existing activity, the effectiveness of mitigation measures and the functioning of monitoring mechanisms;

**"environmental impact"** means any positive or negative effects caused by an activity on the environment;

**"environmental impact assessment"** means the process and procedure for evaluating and predicting the likely environmental impact of a proposed activity;

**"evaluation report"** means a report on studies carried out to ensure that environmental considerations are taken into account when an activity is implemented;

**"local authority"** includes a land board;

**"mitigation measures"** means the reduction or control of the adverse environmental impact of an activity and includes restitution for any damage to the environment caused by such activity through engineering works, technological improvements, management measures or compensation to ameliorate any loss suffered by a person;

**"preliminary environmental impact assessment"** means a description of the likely environmental impacts of an activity provided by the applicant as part of the application;

**"relevant technical department"** means a government department responsible for monitoring an activity undertaken under this Act, by virtue of that department having the necessary technical expertise to do so;

**"scoping"** means consultations with concerned government departments, local authorities, non-governmental organisations, members of the public and any other interested persons, to determine the extent of the likely environmental impact of a proposed activity;

**"statement"** means a report of the environmental impact assessment study executed in

accordance with terms of reference approved by the competent authority;

**"strategic environmental assessment"** means a process for evaluating the environmental consequences of proposed policy, plan, or programme initiatives in order to ensure that they are fully included and appropriately addressed at the earliest stage of decision making, on par with economic and social considerations;

**"threshold"** in relation to an environmental impact assessment of an activity, means a measurable level or limit of an output resulting from the operation of a proposed activity indicative of the activity's environmental impact; and

**"terms of reference"** means a document which details the main environmental issues which must be addressed in an environmental impact study.

### **3. Application of Act**

(1) This Act applies to the activities in respect of which the Minister, may, after screening them, prescribe by regulations.

(2) Regulations made pursuant to subsection (1) shall prescribe -

- (a) a list of activities which are likely to cause significant adverse effects on the environment, or the locations that may be environmentally sensitive, in respect of which a statement shall be mandatory;
- (b) threshold determinations of environmental impact assessment with respect to the activities prescribed under paragraph (a); and
- (c) criteria which shall be used to determine the likely effects of a proposed activity in order to further determine whether or not a statement is required for the activity.

(3) In this section, "screening" means an initial stage in the environmental impact assessment process where the Minister determines whether an activity should be subjected to an environmental impact assessment or not.

### **4. Requirements to undertake an activity**

(1) No person shall undertake or implement an activity prescribed under section 3 unless the environmental impact of the proposed activity is fully taken into account in accordance with the provisions of this Act and authorisation has been issued under section 14.

(2) Any person who undertakes or implements an activity in contravention of subsection (1) commits an offence and is liable to a fine not exceeding P100,000 or to a term of imprisonment not exceeding two years or to both.

(3) A person who contravenes subsection (1) shall rehabilitate the area affected by the adverse environmental impact of the implemented activity.

(4) In this section, "rehabilitate" means the reinstatement or restoration to a normal or functional environmental state.

(5) A person who contravenes subsection (3) commits an offence and is liable to a fine not exceeding P15,000 or to a term of imprisonment not exceeding 2 years or to both.

(6) In the case of a continued contravention in respect of a person convicted under subsection (2) or (5), that person is liable to a further fine not exceeding P2,000 for every day on which the offence continues.

### **5. Ensuring issuance of authorisation**

(1) A licensing authority shall, before issuing a permit, licence, consent or approval to any person who has applied to implement an activity prescribed under section 3, ensure that authorisation has been issued for the proposed activity in accordance with this Act.

(2) In this section, "licensing authority" means any authority vested with the responsibility of issuing licenses for any of the activities prescribed under section 3.

## **PART II**

### ***Preparation of environmental impact assessment documentation (ss 6-11)***

### **6. Requirement for authorisation**

(1) Every-

- (a) application made to obtain authorisation for a proposed activity shall contain or be

accompanied by a preliminary environmental impact assessment which shall include a description of the activity; and

- (b) formulation of a policy or programme, shall contain or be accompanied by an approved strategic environmental assessment, which strategic environmental assessment shall contain a description of the proposed policy or programme.

(2) An application made under subsection (1) (a) shall be in the prescribed form and shall be accompanied by such fee as may be prescribed.

(3) Where the competent authority is satisfied that all relevant information is available in the application and that the activity can be carried out without any adverse environmental impact, the competent authority shall authorise the implementation of the activity.

(4) Where the competent authority finds that information provided in the application is insufficient, the competent authority shall require and specify to the applicant the additional information to be provided.

## **7. Public participation and scoping exercise**

(1) An applicant shall take all measures necessary to seek the views of the people or communities which are likely to be affected by the activity.

(2) In seeking the views of the people or communities in accordance with subsection (1) the applicant shall-

- (a) publicise the intended activity, its effects and benefits in the mass media using the official languages for a period of not less than 21 days; and
- (b) after the expiration of the period of 21 days, hold meetings with the affected people or communities to explain the activity and its effects.

## **8. Terms of reference**

(1) Where, upon a consideration of all the information submitted by the applicant, the competent authority decides that an environmental impact assessment is required, the authority shall inform the applicant, in writing, to prepare terms of reference for the environmental impact assessment, which terms of reference shall be in the prescribed form.

(2) An applicant shall, after complying with section 7 and subsection (1) of this section, submit the terms of reference and the results of the scoping exercise to the competent authority.

(3) In considering the terms of reference, the competent authority shall consult with the relevant technical departments or local authorities, and may-

- (a) conduct such investigation as it considers necessary to ascertain the validity of the scoping exercise of the activity; or
- (b) request the applicant to provide additional information for a better understanding of the terms of reference.

(4) Where the competent authority is satisfied that the terms of reference will adequately assist in guiding the environmental impact assessment of the proposed activity, the competent authority shall approve the terms of reference.

(5) Where an applicant requires the services of a consultant to prepare the terms of reference required in terms of subsection (1), the applicant shall appoint the consultant at the applicant's own expense.

## **9. Environmental impact assessment and statement**

(1) Where the competent authority determines that the proposed activity is likely to have a significant adverse environmental impact, it shall require that such activity undergo an environmental impact assessment, the costs of which shall be borne by the developer.

(2) An environmental impact assessment shall identify and evaluate the environmental impact of an activity with particular reference to the-

- (a) health, safety or quality of life of people;
- (b) archaeological, aesthetic, cultural or sanitary conditions of the environment; and
- (c) configuration, quality and diversity of natural resources.

(3) Where the competent authority determines that an environmental impact assessment

be made under subsection (1), upon being informed in writing about the decision, the applicant shall, before undertaking or implementing the activity, prepare and submit a statement to the competent authority within the period of time prescribed in the approved terms of reference.

(4) A person who contravenes subsection (3) commits an offence and is liable to a fine not exceeding P100,000 or to a term of imprisonment not exceeding five years or to both.

#### **10. Form and content of statement**

(1) A statement shall be made in the prescribed form and shall include-

- (a) the name of the applicant;
- (b) a description of the proposed activity and its purpose;
- (c) an outline of alternative sites of the proposed activity including the non-action alternative;
- (d) a description of the likely environmental impact on local environment and socio-economic consequences;
- (e) an environmental management plan;
- (f) the time period for which environmental impact is predicted;
- (g) an account of the predicted environmental impact and an assessment of each kind of environmental impact;
- (h) a discussion of the distribution of the expected environmental impact;
- (i) a description of mitigating measures to keep adverse environmental impact to a minimum;
- (j) a description of residual environmental impact;
- (k) a proposed monitoring programme and evaluation exercise;
- (l) the potential uses to be prevented or impaired by the proposed activity;
- (m) the possible effects of an environmental impact of an activity;
- (n) the potential trans-boundary environmental impact of an activity;
- (o) a brief, non-technical or executive summary; and
- (p) such other relevant information as the Minister may consider necessary.

(2) In this section, "environmental management plan" means a document representing the administration of efforts that will be made to manage any significant environmental impact resulting from the implementation of the activity; and

"residual environmental impact" means an environmental impact which arises after the implementation of mitigation measures for an activity.

#### **11. Registration and qualifications of consultants**

(1) A person shall be qualified to be engaged as a consultant for the purposes of this Act, if the person -

- (a) is registered as a consultant in accordance with the provisions of subsection (2); and
- (b) has, in his or her employment, or has access to the services of, persons specialising in such disciplines as the Minister may prescribe.

(2) Where an individual applies for registration as a consultant under this Act, the individual shall satisfy the Minister that he or she has obtained by examination, any one of the disciplines prescribed in terms of subsection (1) and has-

- (a) at least two years experience in undertaking environmental assessments, as part of a team; and
- (b) knowledge of the basic processes on the environmental impact assessment process, and of international guidelines on the preparation of terms of reference and statements.

### **PART III**

#### ***Review process of the environmental impact statement (ss 12-15)***

#### **12. Public review of statement**

(1) The competent authority shall, within 60 days of receiving a statement from a developer, examine the statement to determine whether such statement complies with the requirements of section 10.

(2) Where the statement complies with the requirements of section 10, the competent authority shall -

- (a) place a notification in the *Gazette* and in a newspaper circulating at least once weekly, for four consecutive weeks, inviting comments or objections of those persons who are most likely to be affected by the proposed activity and other interested persons, stating the-
  - (i) nature and magnitude of the activity,
  - (ii) location of the activity,
  - (iii) anticipated environmental impact of the activity, and
  - (iv) proposed mitigation measures to respond to the negative environmental impact; and
- (b) in its decision making, consider the comments or objections raised by persons who are likely to be affected by the proposed activity and other interested persons.

### **13. Conduct of public hearing**

(1) The competent authority may hold a public hearing if-

- (a) after examining the statement, the competent authority is of the opinion that the activity is of such a nature that the public should have the opportunity to make submissions or comments at a public hearing; or
- (b) the public concern over the activity is that the activity may have a significant adverse impact on the environment.

(2) The Minister may, in consultation with the competent authority, prescribe the procedure for conducting a public hearing.

(3) The competent authority shall, after a public hearing, consider the findings in determining the adequacy of the environmental impact statement.

### **14. Approval of statement**

(1) Where the competent authority's review of the statement is complete, the competent authority shall-

- (a) grant authorisation to the developer, with such terms and conditions as the competent authority considers necessary, where-
  - (i) the competent authority is satisfied that the statement sufficiently identifies the environmental impact likely to be caused, and
  - (ii) the prescribed mitigation measures in the statement, to avert or minimise the potential adverse environmental impact, are effective and sufficient; or
- (b) where the competent authority is of the view that-
  - (i) the statement does not sufficiently identify the environmental impact likely to be caused, or
  - (ii) the prescribed mitigation measures to avert or minimise the potential adverse environmental impact, are insufficient and ineffective, afford the developer an opportunity to comply with the provisions of the Act; or
- (c) reject the statement, where the developer fails to satisfy the conditions under paragraph (b).

(2) In deferring or rejecting the statement, the competent authority shall furnish the applicant with a written statement of the reasons for its decision.

(3) An authorisation issued under subsection (1) (a) shall be in the prescribed form and shall include-

- (a) what has been decided;
- (b) why the decision has been made; and
- (c) how the statement influenced the decision.

(4) The competent authority may, in issuing an authorisation, prescribe, in writing, specific requirements for monitoring during and after implementation of the proposed activity, by the technical departments, local authorities and the developer.

## **15. Appeals**

A person aggrieved by a decision of the competent authority may appeal to the High Court within 30 days of receiving the decision of the competent authority.

### **PART IV**

#### ***Authorisation of a statement (ss 16-19)***

## **16. Validity of an authorisation**

An authorisation granted under section 14 (1) (a) shall be valid for such period as may be stipulated therein and may be subject to renewal at the end of such period.

## **17. Revocation or modification of authorisation**

(1) The competent authority may revoke or modify an authorisation to implement an activity where there is an unanticipated irreversible adverse environmental impact, or a developer fails to comply with any term or condition subject to which the developer's authorisation was issued.

(2) The competent authority shall not revoke or modify any authorisation granted to a developer until the competent authority has, by notice in writing, given the opportunity to the developer concerned, to-

- (a) rectify any contravention; or
- (b) show cause, within a period not exceeding 21 days from the date of such notice, why the authorisation should not be so revoked or modified.

(3) The competent authority shall publish a notice of any revocation or modification made under this section, in two consecutive issues of-

- (a) the *Gazette*; and
- (b) two newspapers in circulation in Botswana.

## **18. Transfer of authorisation**

(1) No person shall transfer, assign or encumber in any way, without the written consent of the competent authority, an authorisation issued under section 14 (1) (a).

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P15,000 or to imprisonment for a period not exceeding two years or to both.

## **19. Decision making by competent authority**

In assessing applications for an authorisation under this Act, and in making a decision as to whether it ought to issue or renew an authorisation under this Act, the competent authority shall take into account the contents of the terms of reference, the statement, the recommendations of other government departments, local authorities and the comments and objections of interested persons and the public.

### **PART V**

#### ***Post environmental impact assessment of implemented activities (ss 20-21)***

## **20. Monitoring programme and evaluation report**

(1) The relevant technical department or local authority, shall, during and after implementation of an activity, monitor the implementation of the activity to determine compliance with the agreed mitigation measures.

(2) The developer shall submit an evaluation report to the relevant technical department or local authority, at such times as the department or local authority shall determine.

## **21. Environmental audit by competent authority**

(1) The competent authority shall carry out or cause to be carried out biennially at its own expense, environmental audits for approval and operational purposes.

(2) After carrying out an environmental audit under subsection (1), the competent authority may require a developer to take-

- (a) specific mitigation measures to ensure compliance with predictions made in the statement; or
- (b) mitigation measures to address environmental impacts not anticipated at the time of the authorisation.

**PART VI**  
**Miscellaneous (ss 22-31)**

**22. Enforcement of provisions**

(1) If a person alleges that any provision of this Act has been, is being, or is likely to be contravened in relation to him or her, or any other person or group of persons who have a substantial interest, that person may apply to the High Court for redress.

(2) In subsection (1), interest shall be established in accordance with the common law rules of standing.

**23. Public documents and register**

(1) Any terms of reference, statement, report, decision or any other document produced under this Act shall be a public document.

(2) The competent authority shall maintain a register of public documents referred to under subsection (1), which shall be open for public inspection.

**24. Confidentiality**

No person appointed, employed or duly authorised by the competent authority, shall disclose any information which the person acquired in the performance of any duty, or the exercise of any function under this Act, except for the purposes of the performance of a duty or the exercise of a function or when lawfully required to do so by a court.

**25. Protection from personal liability**

An officer, employee or agent of the competent authority shall not be subject to any liability, action, claim or demand, for an act done by the officer, employee or agent, *bona fide* for the purposes of carrying the provisions of this Act into effect.

**26. Powers of entry**

(1) For the purposes of the administration of this Act, an officer of the competent authority who has been authorised by the Director, in writing, may, without previous notice and at any time-

- (a) enter upon any land or premises for the purposes of undertaking investigations and inspections to ensure compliance with this Act;
- (b) stop, seize and search any vehicle, boat or aircraft, which the officer believes to have been used in the commission of an offence or to contain anything which might provide evidence of the offence; or
- (c) require the driver of the vehicle, the person in charge of the boat, or the pilot of the aircraft, referred to in paragraph (b), to furnish the officer with the details of any licence, permit, authority or permission issued to him under this Act.

(2) A person authorised to act under subsection(1) shall, if so required, produce evidence of the authorisation signed by the Director.

(3) Any person who wilfully obstructs a person authorised to exercise the powers under this section, or who gives information which he knows or ought reasonably to know is false, commits an offence and is liable to a fine not exceeding P15,000 or to imprisonment for a term not exceeding two years or to both.

(4) Any power conferred by this section shall be construed as including power to search for the purpose of ascertaining the environmental impact of the activity.

**27. Power to require information**

(1) A person duly authorised under section 26 may, for the purpose of ensuring compliance with this Act, require the owner or occupier of any premises to provide any information which may be required for the purposes of this Act.

(2) Any person who-

- (a) refuses to give the information required under subsection (1); or
- (b) gives information which is false or misleading,

commits an offence and is liable to a fine not exceeding P10,000 or to imprisonment for a term not exceeding one year or to both.



## **28. Trans-boundary environmental impact**

(1) Where a proposed activity is likely to have a significant adverse environmental impact in another country, the competent authority shall consult the Minister.

(2) The Minister shall, through the Minister responsible for foreign affairs, inform the country concerned about the intended activity, by sending to that country's Minister responsible for foreign affairs, the terms of reference or a statement, and any other relevant information.

(3) This section applies to any country-

- (a) in respect of which the Minister, having regard to any reciprocal provisions under the laws of that country, so directs; or
- (b) that is a party to an international agreement or treaty to which Botswana is a party, has acceded to or ratified, where the parties to the international agreement or treaty are obliged to so inform one another.

## **29. General penalty**

Any person who contravenes the provisions of this Act for which no penalty is otherwise provided and is convicted of an offence shall be liable to a fine not exceeding P15,000 or to a term of imprisonment not exceeding two years or to both.

## **30. Regulations**

The Minister may make regulations for any matter which under this Act is to be prescribed or for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing, such regulations may make provision for-

- (a) guidelines for the scoping exercise;
- (b) a list of activities or environmentally sensitive areas for which a statement is mandatory, criteria for determining whether a statement is required and threshold determinations of environmental impact assessment to activities;
- (c) qualifications to conduct an environmental impact assessment;
- (d) forms and content of terms of reference or statement;
- (e) the manner of preparing the terms of reference, statement, monitoring programme or evaluation report;
- (f) reviewing of the terms of reference, the statement, the monitoring programme, the evaluation report and the environmental audit report;
- (g) the manner of holding public hearings;
- (h) revoking or modifying an authorisation issued under this Act;
- (i) the manner in which entry into premises may be achieved to investigate or evaluate an environmental impact, or to monitor and audit the environmental impact of an activity; and
- (j) the trans-boundary environmental impact of an activity.

## **31. Transitional**

(1) Where on the coming into force of this Act, a person is actively engaged in an activity prescribed under section 3, the person may continue to engage in that activity without an authorisation under this Act for a period of 12 months from the coming into force of the Act.

(2) A person referred to under subsection (1) shall, within the twelve months referred to, apply for authorisation in accordance with the provisions of this Act.

(3) A person who contravenes subsection (2) commits an offence and is liable to a fine not exceeding P100,000 or to imprisonment for a term not exceeding five years or to both.

## **32. Act to bind State**

This Act binds the State.

### **CHAPTER 72:01 BOTSWANA POSTAL SERVICES ARRANGEMENT OF SECTIONS**

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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;

**"postal service"** means a service performed and facilities provided in connection with-

- (a) 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 personal 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 thereof 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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