

**CHAPTER 46:08**  
**NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY**  
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Act 2, 2007,  
S.I. 35, 2007,  
S.I. 20, 2008,  
S.I. 49, 2008.

**An Act to provide for the regulation of non-bank financial institutions for the purpose of enhancing the safety and soundness of non-bank financial institutions, setting high standards of conduct of business by non-bank financial institutions, improving the fairness, efficiency and orderliness of the non-bank financial sector and the stability of the financial system and reducing and deterring financial crime and for purposes incidental thereto and connected therewith**

*[Date of commencement: Sections 2, 6, 11-20, 37-39, 41 and 105: 28th May, 2007;  
sections 1, 3-5, 7-10, 21-36, 40, 42-84, 89-104,*

*First Schedule - paragraph 1, Second Schedule - paragraphs 1-10,*

*Third Schedule - paragraphs 1-6, paragraph 7 (except with respect to section 83), paragraph 8,*

*Fourth Schedule - paragraphs 1-5, paragraph 6 (except with respect to section 118),  
paragraphs 7-8,*

*Fifth Schedule - paragraphs 1-5, paragraph 6 (except with respect to  
section 10 subsections (5), (6) and (7), paragraphs 7-8,*

*Sixth Schedule - paragraphs 1-3 and paragraph 4 (except with respect to section 30):  
1st April, 2008; sections 106-107: 16th June, 2008.]*

## PART I

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

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

This Act may be cited as the Non-Bank Financial Institutions Regulatory Authority Act.

#### **2. Interpretation**

In this Act, unless the context otherwise requires-

**"administrator"**, in relation to a pension or provident fund, means a person who provides administration or similar services to the fund;

**"asset manager"** means a person who, under an agreement with another person, applies assets of the other person by way of investment, whether the asset manager makes those investments in its own name or not but does not include a custodian or a trustee;

**"bank"** means-

- (a) a bank licensed in terms of the Banking Act;
- (b) the Botswana Savings Bank;
- (c) the National Development Bank;

**"Board"** means the Board of the Regulatory Authority established under section 11;

**"central securities depository"** means a facility for the deposit, clearing or settlement of securities transactions, whether physically, electronically or otherwise;

**"Chairperson"** means the person appointed as Chairperson in terms of section 11(3)(c);

**"Chief Executive Officer"** means the person appointed as Chief Executive Officer in terms of section 12(1);

**"Code of Conduct"** means a code formulated in terms of section 39;

**"collective investment undertaking"** has the meaning assigned to it under the Collective Investment Undertakings Act;

**"controller"**, of a non-bank financial institution, has the meaning assigned to it under section 4;

**"custodian"** means a person who holds property of another person for safekeeping;

**"Deputy Chairperson"** means the person appointed as Deputy Chairperson in terms of section 11(4);

**"Director"**, in relation to a body corporate, means each of the following-

- (a) a person who is appointed to a position of director;
- (b) a person who is appointed to a position of alternate director and is acting in that capacity;
- (c) a person who, although not appointed to a position of director or alternate director, acts as a director;
- (d) a person in accordance with whose instructions or wishes the directors of the body corporate are accustomed to act,

but paragraph (d) does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the body corporate;

**"financial crime"** means any of the following-

- (a) a criminal offence (whether or not arising under this Act) that involves fraud or dishonesty relating to a non-bank financial institution;
- (b) financing or facilitating a criminal offence (whether or not it arises under this Act) relating to a non-bank financial institution;
- (c) dealing with the proceeds of a criminal offence (whether or not it arises under this Act, whether or not related to non-bank financial institution and whether or not the Proceeds of Serious Crime Act, applies in relation to the matter);
- (d) the offence of money laundering in terms of section 14 of the Proceeds of Serious Crime Act;
- (e) financing of terrorist activity in any place;

**"financial group"** means a group of companies under common control comprised one or more prudentially regulated non-banking financial institutions and their subsidiaries;

**"financial report"**, in relation to a financial year, means the report prepared for the year in terms of section 32(1)(a);

**"financial services"** means services relating to financial matters;

**"financial services law"** means any of the following-

- (a) this Act;
- (b) the Insurance Industry Act ;
- (c) the International Insurance Act, 2005;
- (d) the Pension and Provident Funds Act;
- (e) the Botswana Stock Exchange Act;
- (f) the Collective Investment Undertakings Act;
- (g) Part XVI of the Income Tax Act, so far as it relates to non-bank financial institutions;
- (h) a law that declares itself to be a financial services law for the purposes of this definition;
- (i) a law prescribed for the purposes of this definition; and includes the prudential rules;

**"financial year"** means a period of 12 months starting on 1 April;

**"finance or leasing company"** means a body corporate that provides loans, advances or leasing products, but does not include a bank or a deposit-taking institution;

**"friendly society"** means an association of persons established with no share capital for the purpose of aiding members of the association or their dependants, being an association

that does not employ a person whose main occupation is canvassing for members of, or collecting contributions or subscriptions for, the association;

**"insurance agent"** means a person who solicits applications for insurance or collecting premiums for an insurer;

**"insurer"** means a person who undertakes liabilities by way of insurance (including general insurance, life insurance and re-insurance), whether or not as a member of an association of underwriters, and includes a person operating a medical aid fund;

**"insurance broker"** means a person who arranges insurance otherwise than as agent of the insurer;

**"international insurance firm"** has the meaning assigned to it in the International Insurance Act;

**"investment adviser"** means a person who gives other persons investment advice or recommendations (including about holding and disposing of investments) in relation to securities or other assets;

**"investigator"** means each of the following-

- (a) an employee of the Regulatory Authority appointed in terms of section 54 as an investigator;
- (b) a person appointed in terms of section 19 (b) to conduct an examination or investigation under this Act;

**"licence"** means-

- (a) a licence issued in terms of this Act; or
- (b) a licence, registration or other permission issued in terms of another financial services law;

**"manager"**, in relation to a non-bank financial institution, includes an employee of the institution who exercises managerial functions in relation to the institution;

**"management company"**, for a collective investment undertaking, has the meaning assigned to it in the Collective Investment Undertakings Act;

**"medical aid fund"** means a scheme that provides cover for financial or other assistance to persons in connection with prescribed medical services;

**"member"** means a member of the Board;

**"member of the insurance industry"** means an insurance surveyor, a risk manager, a loss assessor, a loss adjuster or a claims settlement agent;

**"micro lender"** means a person who advances loans to persons, where the loans do not exceed the prescribed amount, but does not include a person licensed in terms of the Banking Act or the Building Societies Act;

**"non-bank financial institution"** means any of the following-

- (a) an asset manager;
- (b) an administrator of a pension or provident fund;
- (c) a person operating a central securities depository;
- (d) a collective investment undertaking that is an investment company with variable capital;
- (e) a person operating a collective investment undertaking other than one described in paragraph (d);
- (f) a custodian;
- (g) a finance or leasing company;
- (h) a friendly society;
- (i) an insurance agent;
- (j) an insurance broker;
- (k) an insurer;
- (l) an international insurance firm;
- (m) an investment adviser;
- (n) a management company for a collective investment undertaking;

- (o) a member of the insurance industry;
- (p) a micro lender;
- (q) a pension or provident fund;
- (r) a securities dealer;
- (s) the operator of a securities exchange;
- (t) a trustee of a collective investment undertaking or a pension or provident fund;
- (u) a financial group;
- (v) a person prescribed for the purposes of this definition, and includes such an institution that provides financial services to persons outside Botswana;

**"pension or provident fund scheme"** means a fund as defined in the Pension and Provident Funds Act;

**"principal officer"**, of a non-bank financial institution, means the person responsible for the daily management of the principal office in Botswana of the institution;

**"prudentially regulated non-bank financial institution"** means an institution declared as such under section 49;

**"prudential rule"** means a rule made in terms of section 50;

**"records"** of a non-bank financial institution means documents and information used in the ordinary course of the business of the institution, whether in written form or kept on microfilm, magnetic tape or any other form of mechanical or electronic medium;

**"Regulatory Authority"** means the Non-Bank Financial Institutions Regulatory Authority established under section 6;

**"securities"** means each of the following-

- (a) shares in, or debentures of, a company, a corporation or an unincorporated body;
- (b) stocks, bonds, certificates of deposit or depository receipts or treasury bills issued or proposed to be issued by a government;
- (c) rights, options or interests in respect of securities referred to in paragraph (a) or (b);
- (d) interests in a collective investment undertaking;
- (e) interests and instruments prescribed for the purposes of this definition;
- (f) derivatives;

**"securities dealer"** means any of the following-

- (a) a stockbroker as defined in the Botswana Stock Exchange Act;
- (b) a person who buys or sells securities on behalf of other persons;
- (c) a person who regularly buys or sells securities on his own behalf otherwise than through a licensed securities dealer;

**"securities exchange"** means a market, exchange, place or facility that provides for bringing together, on a regular basis, buyers and sellers of securities to negotiate or conclude sales of securities;

**"self-regulatory organisation"** means a body declared to be a self-regulatory organisation in terms of subsection 58 (1);

**"self-regulatory organisation arrangements"** means arrangements described in subsection 58 (2);

**"statutory manager"**, for a prudentially regulated non-bank financial institution, means a person appointed as statutory manager in terms of section 73 for the institution;

**"supervisory levy"** means a levy imposed by regulations made under section 23;

**"tax certificate"** means a certificate in terms of section 138(2) of the Income Tax Act;

**"Tribunal"** means the Tribunal established under section 85;

**"trustee"** means-

- (a) a collective investment undertaking that is a unit trust in relation to a person acting as trustee of the trust; and
- (b) in relation to a pension or provident fund, a person acting as a trustee of the fund.

### 3. **Subsidiaries**



For the purposes of a financial services law, the question whether a body corporate is a subsidiary of another body corporate shall be determined in accordance with the Companies Act as if both bodies corporate were companies for the purposes of that Act.

#### **4. Controllers**

(1) For the purposes of a financial services law, each of the following is a controller of a person (in this section called "the relevant person")-

- (a) a person who is in a position to control or exert significant influence over the business or financial operations of the relevant person;
- (b) if the relevant person is a body corporate-
  - (i) a director or member of the governing body of the body corporate;
  - (ii) a person that has the power to appoint a person to be a director or member of the governing body of the body corporate;
  - (iii) a person whose consent is needed for the appointment of a person as a director of the body corporate;
  - (iv) a person that holds at least 20 per cent of the shares of the body corporate;
  - (v) a person that has the power to control at least 20 per cent of the voting rights attached to shares or other securities of the body corporate;
  - (vi) a person that holds rights in relation to the body corporate that, if exercised, would result in that person holding at least 20 per cent of the shares of the body corporate; or that person having the power to control at least 20 per cent of the voting rights attached to shares or other securities of the body corporate;
- (c) if the relevant person is a subsidiary of another person, a person that is a controller of the other body;
- (d) if the relevant person is a prudentially regulated non-bank financial institution, a person declared by the Regulatory Authority in terms of subsection (3) to be a controller of the institution,

but a Minister or the Regulatory Authority, in that capacity, is not a controller of a relevant person.

(2) Prudential rules may modify subsection (1) (b) (iv), (v) or (vi) by substituting a lower percentage for 20 per cent, either generally or in a class of cases specified in the rules.

(3) The Regulatory Authority may declare in writing that a specified person is or is not a controller of a prudentially regulated non-bank financial institution, and notice of such declaration shall be given to the person so declared.

(4) The Regulatory Authority shall not make a declaration in terms of subsection (3) that a person is a controller of a prudentially regulated non-bank financial institution unless-

- (a) the person has been given notice of the proposed declaration and a reasonable opportunity to make representations to the Regulatory Authority about the matter; and
- (b) the Regulatory Authority is satisfied that the person is in a position to control or exert significant influence over the business or financial operations of the institution.

#### **5. Republic, etc. to be bound**

This Act and the financial services laws bind the Republic and the Government.

### **PART II**

#### ***Non-Bank Financial Institutions Regulatory Authority Establishment, objects and constitution of Non-Bank Financial Institutions Regulatory Authority (ss 6-10)***

#### **6. Establishment of Regulatory Authority**

(1) There is hereby established a Regulatory Authority, to be called the Non-Bank Financial Institutions Regulatory Authority.

(2) The Regulatory Authority is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.



## **7. Functions of Regulatory Authority**

The Regulatory Authority has the following functions-

- (a) the functions conferred by this Act and by the other financial services laws;
- (b) the functions of regulatory authority in terms of the other financial services laws;
- (c) the function of advising the Minister on matters related to non-bank financial institutions and financial services, whether of its own accord or at the request of the Minister;
- (d) such other functions as are conferred on it by law.

## **8. Principal objects of Regulatory Authority**

The principal object of the Regulatory Authority is to regulate and supervise non-bank financial institutions so as to foster the-

- (a) safety and soundness of non-bank financial institutions;
- (b) highest standards of conduct of business by non-bank financial institutions;
- (c) fairness, efficiency and orderliness of the non-bank financial sector;
- (d) stability of the financial system, and
- (e) reduction and deterrence of financial crime.

## **9. Regulatory Authority to report on non-bank financial institutions**

If the Regulatory Authority believes that a prudentially regulated non-bank financial institution is financially unsound and the situation may impair the stability of the financial system or the safety and soundness of financial institutions generally the Regulatory Authority shall report the matter to the Bank of Botswana and the Minister.

## **10. Policy directions by Minister**

(1) If, after consultation with the Regulatory Authority, the Minister is of the opinion that the policies being pursued by the Regulatory Authority are not adequate for, or conducive to, the achievement of the objects of the Regulatory Authority as set out in section 8, the Minister may, by directive, determine the policy to be adopted by the Regulatory Authority.

(2) The Regulatory Authority shall give effect to the notified policy while the directive remains in force.

(3) A directive issued in terms of subsection (1) shall be published in the *Gazette* within seven days after it is given to the Regulatory Authority.

### ***The Board and staff of the Regulatory Authority (ss 11-20)***

## **11. The Board**

(1) There shall be a Board of the Regulatory Authority.

(2) Subject to this Act, the Board shall be responsible for the policy and general administration of the Regulatory Authority, and may exercise all the powers of the Regulatory Authority.

(3) The Board shall consist of-

- (a) the Governor of the Bank of Botswana;
- (b) the Permanent Secretary of the Ministry responsible for finance; and
- (c) four other persons appointed by the Minister, one of whom shall be appointed by the Minister to be Chairperson of the Regulatory Authority.

(4) The Board shall appoint, from the members appointed in terms of subsection (3) (c), a member to be Deputy Chairperson.

(5) The performance of the Regulatory Authority's functions and the exercise of its powers shall not be affected by a vacancy in the office of a member.

## **12. Appointment of Chief Executive Officer**

(1) The Minister shall appoint, on the recommendation of the Board, the Chief Executive Officer of the Regulatory Authority.

(2) While holding office, the Chief Executive Officer shall devote the whole of his or her professional services to the Regulatory Authority and shall not, without the written approval of the Minister, receive any salary or supplement to salary from any source other than the Regulatory Authority, or occupy any other office or employment, whether remunerated or not,

except as a nominee of the Regulatory Authority.

(3) Subsection (2) does not prevent the Chief Executive Officer from serving as a member of a board, committee or Regulatory Authority established by Government, or holding office as a member of the board of any other body, or an international financial organisation, of which Botswana is a member.

(4) Subject to this Act, the terms and conditions on which the Chief Executive Officer holds office are to be as determined by the Board.

### **13. Period of office**

(1) The member referred to in section 11 (3) (c) shall hold office for the period specified in the instrument of his or her appointment, which shall not be more than five years.

(2) If otherwise qualified, a member is eligible for reappointment.

### **14. Qualifications**

(1) The Minister shall not appoint a person to be a member unless satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields-

- (a) business;
- (b) financial markets;
- (c) financial products and financial services;
- (d) financial, commercial or business law;
- (e) economics;
- (f) accounting.

(2) A person is not capable of being appointed a member if the person-

- (a) is a member of the National Assembly; or
- (b) is a director, secretary or executive officer of a non-bank financial institution;
- (c) whether in Botswana or in another jurisdiction, has been convicted of an offence for which he or she could have been sentenced to imprisonment without the option of a fine, or an offence involving dishonesty;
- (d) whether under the law of Botswana or of another jurisdiction, is insolvent or bankrupt and has not been rehabilitated;
- (e) is disqualified or suspended (other than at his or her own request) by a competent authority from practising a profession on the ground of misconduct; or
- (f) is disqualified from acting as a director or executive officer of a body corporate under a law relating to corporations or to the provision of financial services, whether in Botswana or in another jurisdiction.

### **15. Resignation**

(1) The Chairperson and Deputy Chairperson may resign office by giving at least three months' notice in writing to the Minister.

(2) Other members referred to in section 11 (3) (c) may resign office by giving at least one month's written notice to the Minister.

### **16. Termination of appointment**

(1) The appointment of a member immediately terminates if the member-

- (a) becomes a member of the National Assembly;
- (b) becomes a director, secretary or executive officer of a non-bank financial institution;
- (c) is convicted of an offence in Botswana or in other jurisdiction for which he or she could have been sentenced to imprisonment without the option of a fine, or an offence involving dishonesty;
- (d) becomes insolvent or is declared bankrupt and has not been rehabilitated;
- (e) is disqualified or suspended (other than at his or her own request) by a competent authority from practising a profession on the ground of misconduct; or
- (f) is disqualified in Botswana from acting as a director or executive officer of a body corporate under a law relating to corporations or to the provision of financial services.

- (2) The Minister may terminate a member's appointment on the ground that the member-
- (a) has ceased to be fit and proper person to be a member;
  - (b) is suffering from a mental or physical condition such that he or she cannot properly carry out the duties of the office;
  - (c) has failed, without leave of the Regulatory Authority, to attend more than three consecutive meetings of the Regulatory Authority;
  - (d) has been disqualified from acting as a director or executive officer of a body corporate under a law relating to corporations or to the provision of financial services, either in Botswana or elsewhere;
  - (e) is convicted of an offence outside Botswana for which he or she could have been sentenced to imprisonment without the option of a fine, or an offence involving dishonesty;
  - (f) is declared bankrupt under a law of a place outside Botswana and has not been rehabilitated;
  - (g) is disqualified outside Botswana from acting as a director or executive officer of a body corporate under a law relating to corporations or to the provision of financial services; or
  - (h) has failed to comply with the Code of Conduct in a material particular.

#### **17. Remuneration**

Members shall be paid such remuneration and allowances as may be determined by the Minister.

#### **18. Meetings**

(1) The Board shall hold at least nine meetings in each financial year, and such other meetings as are necessary for the efficient performance and exercise of its functions and powers.

(2) At a meeting of the Board, four members shall constitute a quorum.

(3) At a meeting of the Board if-

- (a) the Chairperson is present - the Chairperson is to preside;
- (b) the Chairperson is not present but the Deputy Chairperson is present - the Deputy Chairperson is to preside; and
- (c) neither the Chairperson nor the Deputy Chairperson is present - the members present shall elect one of their number to preside.

(4) A question arising at a Board meeting is to be determined by a majority of the votes of the members present and voting.

(5) The person presiding at a Board meeting has a deliberative vote and, if necessary, also has a casting vote.

(6) Subject to this Act, the Board may regulate proceedings at its meetings as it considers appropriate.

#### **19. Staff, etc.**

The Regulatory Authority may, on terms it thinks fit-

- (a) employ or engage staff; and
- (b) engage other people to provide advice to it or perform functions or services for it.

#### **20. Declaration of interests**

(1) Each member shall disclose in writing to each other member all interests that the member has that could conflict with the proper performance of the functions of the member's office, whether the interests were acquired before or after appointment.

(2) A disclosure in terms of subsection (1) shall be given as soon as practicable after the member becomes aware of the interest.

(3) The Regulatory Authority shall record all disclosures in terms of this section.

(4) A member who has an interest that could conflict with the proper performance of the functions of his or her office in relation to a particular matter shall not perform functions in

relation to the matter unless-

- (a) the member has complied with subsection (1) in relation to the interest; and
- (b) each of the other members has consented to the member's performing those functions in relation to the matter despite the potential conflict of interest.

(5) For the purposes of subsections (1) and (4), it does not matter whether the interest is direct, indirect, pecuniary or non-pecuniary, nor when the interest was acquired.

(6) For the purposes of this section, if-

- (a) a related party of a member has an interest, and
- (b) if the member had the interest, it could conflict with the proper performance of the functions of the member's office,

the member is taken to have the interest, and this section applies accordingly.

(7) In subsection (6)-

"related party" of a member means any of the following-

- (a) a spouse or a relative of the member;
- (b) a person in accordance with whose directions, instructions or wishes the member is accustomed to act or is under an obligation, formal or informal, to act;
- (c) a person who is accustomed to act, or is under an obligation, whether formal or informal, to act, in accordance with the directions, instructions or wishes of the member;
- (d) a company of which the member is a director or executive officer, and a subsidiary of such a company;
- (e) a company of which the member, or a spouse or relative of the director, is a director or executive officer;
- (f) a company of which the member, or a spouse or relative of the member, is a controller;
- (g) if the directors of a company accustomed to act, or under obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the member - the company;
- (h) if the member and another person are parties to a contract, arrangement or understanding-
  - (i) to acquire, hold, sell or otherwise deal in securities in concert; or
  - (ii) to exercise voting rights in a specified company in concert,

(8) The Regulatory Authority shall take reasonable steps to ensure that its employees, and other persons performing or exercising functions or powers of the Regulatory Authority under financial services laws, make proper and adequate disclosure of their interests.

### ***Financial and accountability provisions (ss 21-30)***

## **21. Money of the Regulatory Authority**

The funds of the Regulatory Authority shall consist of-

- (a) supervisory levies imposed on financial institutions in terms of section 23, and interest in respect of unpaid supervisory levies;
- (b) money raised as fees and charges, and interest from unpaid fees and charges, in respect of services rendered by the Regulatory Authority in performing its functions under a financial services law;
- (c) money paid in respect of civil penalties imposed by the Regulatory Authority under this Act;
- (d) money borrowed by the Regulatory Authority in terms of section 27;
- (e) money paid to the Regulatory Authority as a donation or bequest;
- (f) money appropriated for the purposes of the Regulatory Authority from the Consolidated Fund; and
- (g) money accruing to the Regulatory Authority from any other source.

## **22. Annual estimates and levy structure**

- (1) For each financial year, the Regulatory Authority shall prepare-
- (a) annual estimates of its expenditure; and
  - (b) a proposal for supervisory levies for the financial year.
- (2) An annual estimate of the Regulatory Authority's expenditure for a financial year shall include provision for a reserve of not more than 10 per cent of the total expenditure provided for in the estimate.
- (3) The Regulatory Authority must, at least two months before the start of a financial year, publish draft annual estimates and proposal for supervisory levies for the financial year in a way that the Regulatory Authority considers will bring them to the attention of non-bank financial institutions generally, and call for submissions on the draft estimates.
- (4) The Regulatory Authority must, at least two months before the start of a financial year and having regard to any submissions received as mentioned in subsection (3), submit annual estimates of its expenditure to the Minister for approval and a recommendation for supervisory levies for the financial year.
- (5) The Regulatory Authority shall not make expenditures in relation to a financial year in excess of the total expenditures provided for in the annual estimates for the year approved by the Minister, unless the Minister approves the additional expenditure.

### **23. Supervisory levies**

- (1) The Minister shall, for each financial year, on the recommendation of the Regulatory Authority, make regulations for or with respect to the imposition and collection of supervisory levies.
- (2) The regulations shall set out the basis of calculation of supervisory levies for a financial year.
- (3) Different bases of calculation, and different rates of supervisory levy, may be prescribed for different classes of non-bank financial institutions.
- (4) For the purposes of calculating the rates of supervisory levy for a class of non-bank financial institutions, supervisory levies for a financial year may be worked out on the basis of a set rate per P1,000 of assets under management by an institution as at the end of the previous financial year, as disclosed in annual return lodged by the institution for the previous financial year.
- (5) The regulations may include provision for imposing interest on unpaid supervisory levy, and for imposing penalty levy for cases where a misstatement or other non-compliance by a non-bank financial institution leads to an under-collection of supervisory levy.

### **24. Fees and charges**

- (1) The Minister may by regulations impose fees and charges for licences and renewals of licences, and for other services provided by the Regulatory Authority.
- (2) Different rates of fees may be imposed for different classes of non-bank financial services, and different classes of licence or service in performing its functions under a financial services law.

### **25. Supervisory levy, fees and charges, debts to Regulatory Authority**

Supervisory levy, penalty levy and fees and charges are a debt due to the Regulatory Authority and may be recovered by action in a court of competent jurisdiction.

### **26. Waiver of levies or fees**

The Regulatory Authority may, on application, waive payment of some or all of a supervisory levy, penalty levy or a fee.

### **27. Borrowings**

The Regulatory Authority may borrow money from the Bank of Botswana, or from a bank, but only-

- (a) to cover a short-term cash flow shortfall within the annual estimates for the year approved by the Minister in terms of section 22; or
- (b) with the Minister's approval.

## **28. Advances from Government**

The Minister may, out of money appropriated for the purpose, make advances to the Regulatory Authority, and may enter into agreements with the Regulatory Authority for the repayment, on terms satisfactory to the Minister, of amount so advanced.

## **29. Levies Account**

(1) The Regulatory Authority shall establish an account, to be called the Levies Account.

(2) The following shall be paid into the Levies Account-

- (a) money paid to the Regulatory Authority as supervisory levies, fees or charges;
- (b) money received by the Regulatory Authority as interest or profits from the investment of money standing to the credit of the Levies Account;
- (c) money paid to the Regulatory Authority for the purposes of the Regulatory Authority.

(3) Money standing to the credit of the Levies Account is to be applied for the following purposes-

- (a) meeting the expenses of the Regulatory Authority incurred in performing its functions; and
- (b) making investments authorised in terms of this Act.

## **30. Investments**

Money standing to the credit of the Levies Account but not immediately required may be invested in commercial bank deposits or in securities issued or guaranteed by the Government, as the Regulatory Authority may determine.

### ***Financial accounting (ss 31-36)***

## **31. Record keeping**

(1) The Regulatory Authority shall keep written financial records that-

- (a) correctly record and explain the transactions, financial position and performance of the Regulatory Authority, and
- (b) will enable a true and fair financial report about the Regulatory Authority to be prepared and audited.

(2) The records shall be kept for at least seven years after the date of the transactions to which they relate.

(3) The records shall be kept in English.

(4) The records may be kept electronically, but shall be able to be readily produced in hard copy.

## **32. Financial statements and annual report**

(1) The Regulatory Authority shall prepare, for each financial year-

- (a) a financial report that consists of-
  - (i) balance sheets, profit and loss accounts and the other financial statements for the year, as required by applicable accounting standards; and
  - (ii) notes to the financial statements, as required by applicable accounting standards, and
- (b) an annual report.

(2) The financial report shall include all information necessary to give a true and fair view of the financial position and performance of the Regulatory Authority.

(3) The annual report for a financial year shall report on the Regulatory Authority's operations and affairs during the year.

(4) Without limiting what is to be included in the report, it shall include-

- (a) a discussion of the performance of the non-bank financial sector over the year, and an account of the way in which the Regulatory Authority has performed its functions under financial services laws;
- (b) details of any significant changes in the state of the affairs of the Regulatory Authority during the financial year;
- (c) details of any matter or circumstance that has arisen since the end of the year that has



- significantly affected, or may significantly affect the operations of the Regulatory Authority in future financial years, and
- (d) information about material contraventions of the Code of Conduct during the financial year.

### **33. Financial reports to be audited**

(1) The Regulatory Authority shall cause the financial report for a financial year to be audited by an auditor appointed by the Regulatory Authority and approved by the Minister, and shall obtain the auditor's report.

(2) For the purposes of the audit, the auditor-

- (a) has a right of access at all reasonable times to the Regulatory Authority's records, and
- (b) may require any member or employee of the Regulatory Authority to provide information, explanations or other assistance.

(3) A person who fails or refuses to comply with a reasonable requirement in terms of subsection (2) (b) commits an offence and on conviction is liable to a fine not exceeding P10,000 or to imprisonment for a term not exceeding 12 months, or to both.

(4) The auditor shall audit the financial report and report to the Regulatory Authority whether, in his or her opinion, the financial report is in accordance with this Act, including, in particular, whether it gives a true and fair view of the state of the affairs of the Regulatory Authority as at the end of the financial year to which it relates, and where the auditor is not of that opinion, the report shall state the reason.

### **34. Financial report and annual report to be given to Minister**

(1) The Regulatory Authority shall, within six months after the end of a financial year or such longer period as the Minister may approve, give the Minister a copy of the financial report and the annual report for the financial year, and of the auditor's report on the financial report.

(2) As soon as practicable after the reports have been given to the Minister, they shall be laid before the National Assembly.

(3) As soon as practicable after the reports are laid before the National Assembly, the Regulatory Authority shall cause copies of them to be published in a newspaper of general circulation and to be made available to non-bank financial services institutions.

### **35. Reporting to National Assembly and industry**

(1) The Regulatory Authority shall, through the Minister, comply with any request by the National Assembly or a committee of the National Assembly for information relating to the performance of its functions.

(2) The Chairperson and the Chief Executive Officer shall, as soon as practicable after the Regulatory Authority's annual report has been laid before the National Assembly, make copies of the report available to non-bank financial institutions, and make arrangements to attend such conferences or meetings with non-bank financial institutions as in their view will enable non-bank financial institutions generally to consider the report and question them about the Regulatory Authority's intended activities in the financial year after the year to which the report relates.

### **36. Auditor General may examine Regulatory Authority**

The Auditor General shall, if the Minister so directs, examine and report on the accounts of the Regulatory Authority on any aspects of its operations, and the Regulatory Authority shall give the Auditor General all necessary facilities for that purpose.

#### ***Other provisions (ss 37-41)***

### **37. Protection of Regulatory Authority, officers, etc.**

None of the following-

- (a) the Regulatory Authority;
- (b) a member or employee of the Regulatory Authority,

shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in



connection with the exercise of powers or the performance of functions under a financial services law.

### **38. Secrecy**

(1) In this section-

"officer" means a person who is or has been a member or employee of the Regulatory Authority or a person engaged by the Regulatory Authority in terms of section 19 (b).

(2) An officer who discloses to any person any information (orally or in writing) relating to the affairs of any non-bank financial institution, or any other person, that the officer has acquired in the performance of his or her duties or the exercise of his or her functions as such commits an offence and on conviction is liable to a fine not exceeding P30,000 or to imprisonment for a term not exceeding three years, or to both.

(3) Subsection (2) does not prevent-

- (a) disclosure of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it;
- (b) disclosure of the name of a licensed non-bank financial institution;
- (c) disclosure of the addresses at which licensed non-bank financial institutions carry on business;
- (d) disclosure of any other information reasonably necessary to enable members of the public to contact non-bank financial institutions; or
- (e) disclosure of information to the Commissioner General of Taxes.

(4) It is a defence to a charge in terms of subsection (2) that-

- (a) the disclosure was for the purposes and in the course of the exercise of the officer's duties or the performance of the officer's functions under a financial services law;
- (b) the disclosure was made to or with the consent of the non-bank financial institution or the person concerned;
- (c) the disclosure was made in accordance with a lawful requirement of a court of competent jurisdiction;
- (d) the disclosure was authorised by a financial services law;
- (e) the disclosure was required by another law; or
- (f) the disclosure was authorised by regulations made for the purposes of this section.

(5) Every person appointed under or employed in carrying out the provisions of this Act, except the Minister, shall make an oath or declaration of secrecy in the manner and form prescribed.

### **39. Code of conduct**

(1) The Regulatory Authority shall formulate a Code of Conduct, to apply to the members and employees of the Regulatory Authority.

(2) The Code of Conduct shall be consistent with this Act and other financial services laws, and shall make provision for at least the following matters-

- (a) use and disclosure of information by members and employees of the Regulatory Authority;
- (b) reducing or eliminating improper influence on the Regulatory Authority and on members and employees of the Regulatory Authority in carrying out their functions under financial services laws;
- (c) trading in and ownership of securities or other financial instruments by members and employees of the Regulatory Authority;
- (d) conflicts of interest;
- (e) receiving, keeping, holding and reporting gifts of any description by members and employees of the Regulatory Authority.

(3) The Regulatory Authority shall review the Code of Conduct at least once a year.

(4) A member or employee of the Regulatory Authority shall not contravene the Code of Conduct.

(5) Contravention of the Code of Conduct is not of itself an offence, but (without limiting any other law)-

- (a) a contravention of the Code of Conduct by a member may be evidence that the member is not fit and proper to be a member; and
- (b) an employee of the Regulatory Authority who contravenes the Code of Conduct commits a breach of his or her contract of service with the Regulatory Authority.

#### **40. Arrangements with other agencies**

(1) In carrying out its functions under financial services laws, the Regulatory Authority shall consult with the Bank of Botswana and other agencies of the Government that have functions related to the regulation or supervision of financial services, taxation, social security or the financial system.

(2) The Regulatory Authority may enter into arrangements with the Bank of Botswana and other agencies of the Government that have functions related to the regulation or supervision of financial services, taxation, social security or the financial system.

(3) Without limiting what those arrangements may deal with, they may make provision for-

- (a) the exchange of information between the Regulatory Authority and the other agencies, with due regard for the need to protect appropriately personal information about persons;
- (b) consultation between the Regulatory Authority and the other agencies;
- (c) enforcement of financial services laws and assistance with enforcement of other laws; and
- (d) the conduct of examinations and investigations on a joint basis.

(4) The Regulatory Authority may enter into similar arrangements with organizations outside Botswana in carrying out its regulatory and supervisory functions under financial services laws.

#### **41. Delegations**

(1) The Board may delegate any of its functions or powers under this Act (other than this power of delegation) to-

- (a) a member;
- (b) an employee of the Regulatory Authority;
- (c) an employee of the Bank of Botswana;
- (d) an investigator; or
- (e) a self-regulatory organisation.

(2) In performing or exercising a delegated function or power, the delegate shall comply with directions given by the person delegating the function or power.

(3) A delegation in terms of this section may be subject to conditions specified in the instrument of delegation.

(4) A delegated power or function shall be exercised or performed in accordance with the instrument of delegation.

(5) A delegation may be varied or revoked at will and does not prevent the Board from exercising the delegated power or performing the delegated function.

### **PART III**

#### ***Licensing of non-bank financial institutions (ss 42-48)***

#### **42. Non-bank financial institutions to be licensed**

(1) A person who carries on a business as a non-bank financial institution otherwise than in accordance with a licence commits an offence and on conviction is liable to a fine not exceeding P2,500 for each day on which the offence occurs or continues to occur or to imprisonment for a period not exceeding five years, or to both.

(2) For the purposes of, but without limiting, subsection (1), carrying on a business as a non-bank financial institution includes carrying on such a business by providing financial

services to a person outside Botswana.

#### **43. Licensing**

(1) The Regulatory Authority may, on application made as prescribed, accompanied by such documents and statements as are prescribed and as the Regulatory Authority directs, grant a person a licence as a non-bank financial institution of a kind specified in the licence.

(2) The Regulatory Authority may require an applicant for a licence to give it further information in connection with the application.

(3) The Regulatory Authority is not bound to deal further with the application until the requirement is satisfied.

(4) The Regulatory Authority shall not grant an application for a licence unless satisfied that the applicant-

- (a) will carry on the activities to be covered by the licence with integrity, prudence and professional skill;
- (b) will maintain a sound financial position and not cause or promote instability in the financial system; and
- (c) otherwise meets and will continue to meet the requirements of the financial services laws.

(5) The Regulatory Authority may impose conditions on a licence.

(6) A financial services law may prescribe additional criteria for granting licences.

#### **44. Period of licence**

Regulations shall be made providing for the duration, expiration, renewal and revocation of licences issued under this Act.

#### **45. Display of licence**

(1) If the Regulatory Authority grants an application for a licence, it shall issue the licence to the applicant.

(2) The Regulatory Authority shall publish notice of the grant of a licence in the *Gazette*.

(3) A licensed non-bank financial institution shall prominently display a copy of its licence at its offices in Botswana.

(4) A licensed non-bank financial institution that contravenes subsection (3) shall be liable to a civil penalty not exceeding P5,000 to be imposed by the Regulatory Authority.

#### **46. Variation, suspension or cancellation of licence on request**

The Regulatory Authority may, on written request by a licensed non-bank financial institution, by notice to the institution-

- (a) vary the conditions of the institution's licence (including by imposing additional conditions);
- (b) suspend the institution's licence for the period specified in the notice; or
- (c) cancel the institution's licence.

#### **47. Variation, suspension and cancellation of licence**

(1) This section applies if it appears to the Regulatory Authority that a licensed non-bank financial institution-

- (a) is not carrying on, or is likely not to carry on, the business for which it is licensed with integrity, prudence and professional skill;
- (b) is in an unsound financial position or is likely to become in an unsound financial position;
- (c) is causing or promoting instability in the financial system, or is likely to do so;
- (d) is not complying or is likely not to comply with a financial services law;
- (e) is or is likely to be involved in financial crime;
- (f) has failed to submit reports as required under section 52; or
- (g) has failed to pay a civil penalty imposed by the Regulatory Authority under this Act.

(2) If this section applies, the Regulatory Authority may, by notice to the licensed non-bank financial institution-

- (a) vary the institution's licence-
  - (i) restricting the activities that can be carried on in terms of the licence; or
  - (ii) including further conditions on the licence;
- (b) suspend the institution's licence for the period specified in the notice; or
- (c) cancel the institution's licence.

(3) A financial services law may prescribe additional criteria for variation, cancellation or suspension of licences.

(4) The Regulatory Authority shall not act in terms of subsection (2) in relation to a licensed non-bank financial institution unless-

- (a) the Regulatory Authority has given the institution written notice of the proposed action, setting out the reasons for the proposed action and stating that the institution has a specified period (at least 21 days) to make representations to the Regulatory Authority about the matter; and
- (b) the Regulatory Authority has taken into account any representations made by or for the institution within that period.

(5) The Regulatory Authority may suspend the licence of a licensed non-bank financial institution without giving a notice in terms of subsection (4) if satisfied on reasonable grounds that it is necessary to do so to prevent or mitigate damage to the interests of nonbank financial institutions, clients of non-bank financial institutions or the financial system, but the Regulatory Authority shall-

- (a) give the institution the notice as soon as practicable;
- (b) give the institution the opportunity mentioned in subsection (4) (a); and
- (c) having considered any representations made by or for the institution, determine whether the suspension should be confirmed.

#### **48. Exemptions from and modifications of this Part**

(1) The Regulatory Authority may, by notice in the *Gazette*-

- (a) exempt a person wholly or partly, as specified in the notice, from this Part; or
- (b) declare that this Part applies in relation to a person as modified in the declaration.

(2) An exemption or declaration may-

- (a) apply generally or to a specified case or class of cases; or
- (b) apply unconditionally or subject to specified conditions.

### **PART IV**

#### ***Supervision and regulation of non-bank financial institutions (s 49)***

#### **49. Prudentially regulated non-bank financial institutions**

(1) The non-bank financial institutions referred to in subsection (2) are declared to be prudentially regulated non-bank financial institutions, and accordingly the provisions of section 50 and prudential rules made thereunder shall have effect in relation to such prudentially regulated financial institutions.

(2) The following are prudentially regulated non-bank financial institutions-

- (a) an asset manager;
- (b) a person operating a central securities depository;
- (c) a collective investment undertaking that is an investment company with variable capital;
- (d) a person operating a collective investment undertaking other than one described in paragraph (c);
- (e) a custodian;
- (f) an insurer;
- (g) a pension or provident fund;
- (h) a securities dealer;
- (i) the operator of a securities exchange;
- (j) a trustee of a collective investment undertaking or a pension or provident fund;
- (k) pension fund administrator;

- (l) finance and leasing company;
- (m) insurance agent;
- (n) insurance broker;
- (o) international insurance firm;
- (p) investment adviser;
- (q) management company for a collective investment undertaking;
- (r) micro lender.

(3) Without prejudice to the preceding provisions of this section, regulations may declare other non-bank financial institutions to be prudentially regulated non-bank financial institutions, and the provisions of section 50 and prudential rules made thereunder shall have effect in relation to such institutions.

### ***Prudential Rules (s 50)***

#### **50. Prudential rules**

(1) The Regulatory Authority may make and publish rules imposing requirements with respect to-

- (a) the conduct of the affairs of prudentially regulated non-bank financial institutions, or of the affairs of financial groups, with a view to ensuring that the prudentially regulated financial institutions or the groups (as the case requires) maintain a sound financial position and do not cause or promote instability in the financial system; or
- (b) the conduct of the affairs of prudentially regulated non-bank financial institutions with integrity, prudence and professional skill.

(2) Without limiting what a prudential rule may deal with, a prudential rule may impose requirements with respect to any of the following-

- (a) fit and proper person requirements for controllers and managers of prudentially regulated non-bank financial institutions;
- (b) the governance of non-bank prudentially regulated financial institutions;
- (c) capital and liquidity requirements;
- (d) valuation requirements and methods;
- (e) standards of business conduct;
- (f) requirements for controllers of non-bank financial institutions;
- (g) the use by non-bank financial institutions of financial instruments (including derivatives) and off balance sheet transactions;
- (h) insurance and, in the case of insurers, re-insurance arrangements;
- (i) outsourcing;
- (j) how prudentially regulated non-bank financial institutions manage risks associated with their businesses.

(3) The Regulatory Authority shall not make a prudential rule unless-

- (a) either-
  - (i) a draft of the rule has been published in a way that the Regulatory Authority considers will bring it to the attention of prudentially regulated non-bank financial institutions to which it will apply;
  - (ii) those institutions have had at least 90 days after that publication to make representations about the matter to the Regulatory Authority; and
  - (iii) the Regulatory Authority had regard to those representations in deciding whether to make the rule; or
- (b) the Regulatory Authority considers on reasonable grounds that it is necessary to make the rule urgently.

(4) A prudential rule made in terms of paragraph (b) of subsection (3) ceases to have effect at the end of 90 days after it is made, but this subsection does not prevent the Regulatory Authority from acting in terms of that paragraph again.

(5) Subsections (3) and (4) apply in respect of modifications of prudential rules.

### ***Information, reports, etc. (ss 51-52)***

#### **51. Information to be given to Regulatory Authority**

The Regulatory Authority may at any time give a written direction to a licensed non-bank financial institution requiring it to give information to the Regulatory Authority relevant to the performance of the Regulatory Authority's functions under a financial services law.

#### **52. Reporting**

(1) The Minister may make regulations that impose requirements on any of the following-

- (a) a non-bank financial institution;
- (b) an affiliate of a non-bank financial institution;
- (c) a person who is or has at any time been a director or manager of a non-bank financial institution;
- (d) a person who is or has at any time been an auditor of a non-bank financial institution;
- (e) in the case of a pension or provident fund or an insurer, an actuary or auditor for the fund or the insurer;
- (f) a controller of a non-bank financial institution;

to make reports to the Regulatory Authority, and to give information or documents to the Regulatory Authority, in connection with the Regulatory Authority's performing its functions under a financial services law.

(2) Without limiting subsection (1), the regulations may do any of the following-

- (a) require the lodgement of periodic and other returns;
- (b) require changes in management and control of non-bank financial institutions to be reported to the Regulatory Authority;
- (c) require financial difficulties or suspected financial difficulties in non-bank financial institutions to be reported to the Regulatory Authority;
- (d) require contraventions or suspected contraventions of financial service laws in relation to non-bank financial institutions to be reported to the Regulatory Authority.

(3) A person who refuses or fails to comply with regulations made for the purposes of this section shall be liable to a civil penalty not exceeding P50,000 to be imposed by the Regulatory Authority.

(4) A person who reports to the Regulatory Authority-

- (a) financial difficulties or suspected financial difficulties in a non-bank financial institution;
- (b) a breach or suspected breach of a financial services law in relation to a non-bank financial institution;
- (c) the involvement or suspected involvement of a non-bank financial institution in financial crime,

whether or not the report is required by law, shall not be liable for damages or other sanction in relation to a loss caused by the report unless it is established that the report was made in bad faith.

(5) A person who subjects another person (in this subsection called a "reporter") to any prejudice in his or her employment, or penalises a reporter in any way, on the ground that the reporter made a report of a kind mentioned in subsection (4), even if the report was not required by law, commits an offence and on conviction is liable to a fine not exceeding P10,000.

### ***Directions (s 53)***

#### **53. Powers to give directions**

(1) If it appears to the Regulatory Authority that-

- (a) a non-bank financial institution has contravened a financial services law;
- (b) a non-bank financial institution is likely to contravene a financial services law;
- (c) a non-bank financial institution is conducting its affairs in an improper or in a financially unsound way;
- (d) a non-bank financial institution is causing or promoting instability in the financial system, or is likely to do so;



- (e) a non-bank financial institution is involved in financial crime; or
- (f) the direction is necessary to protect the interests of clients of a non-bank financial institution,

the Regulatory Authority may give the non-bank financial institution a written direction as to the way in which the affairs of the institution are to be conducted.

(2) Without limiting subsection (1), a direction may require a non-bank financial institution to do any of the following-

- (a) to comply with the whole or a specified part of a financial services law;
- (b) to cause a person (such as an auditor) chosen by the Regulatory Authority to audit the records of the institution, at the expense of the institution, and give the report to the Regulatory Authority;
- (c) to ensure that a specified director or employee of the institution does not take part in the management or conduct of the business of the institution except as permitted by the Regulatory Authority;
- (d) to appoint a specified person or persons to a specified office (including the office of director) of the institution for a period specified in the direction;
- (e) to remove an auditor or actuary of the institution from office;
- (f) not to borrow a specified amount, or any amount;
- (g) not to pay a dividend;
- (h) not to pay or transfer an amount to a person, or create an obligation (contingent or otherwise) to do so;
- (i) not to undertake a financial obligation (contingent or otherwise) on behalf of another person;
- (j) to take any other action the Regulatory Authority considers necessary or desirable to deal with the case in the interests of the institution, the clients of the financial institution or the financial system.

(3) A direction may include a direction to remove a director or officer of the non-bank financial institution from office but only if the Regulatory Authority is satisfied that-

- (a) either-
  - (i) the institution has contravened a financial services law or been involved in financial crime; and
  - (ii) the director or officer was knowingly concerned in the contravention of the financial crime; or
- (b) the director or officer has contravened a financial services law or has been knowingly concerned in financial crime (whether or not related to the institution).

(4) A direction in terms of subsection (2) not to pay or transfer an amount does not apply to the payment or transfer of money under an order of a court or a process of execution.

(5) A direction may specify the time by which, or period during which, it is to be complied with.

(6) A non-bank financial institution that has been given a direction in terms of this section has power to comply with it despite anything in its memorandum or articles of association or regulations, and despite any contract or arrangement to which it is a party.

(7) A direction in terms of this section is not a ground on which a person may terminate, repudiate or cancel a contract with the non-bank financial institution, accelerate a debt under such a contract or close out a transaction with the institution, despite any provision to the contrary in any document.

(8) The High Court may, on application by a party to a contract mentioned in subsection (7) (other than the non-bank financial institution), make an order relating to the effect of the direction on the contract.

(9) Without limiting what the order may do, the order may require the non-bank financial institution-



- (a) to perform its obligations under the contract; or
- (b) to compensate the applicant, as specified in the order; but may not require a person to take action that would contravene the direction.

(10) The Regulatory Authority may revoke a direction at any time, by written notice to the non-bank financial institution concerned.

#### ***Inspections and investigations (ss 54-57)***

### **54. Appointment of inspectors and investigators**

(1) The Regulatory Authority may, by instrument in writing, appoint a person to be an inspector or an investigator.

(2) The Regulatory Authority shall provide to each inspector and investigator an identity card approved by the Regulatory Authority.

(3) An inspector or investigator, when exercising a power conferred by this Act, shall, on reasonable demand, produce his or her identity card for inspection, but failure to do so does not make the exercise of the power invalid.

### **55. Routine inspections of licensed non-bank financial institutions**

(1) An inspector may at any time inspect the affairs or any part of the affairs of a person who is, or at any time has been, a licensed non-bank financial institution to check whether the institution-

- (a) is complying or has complied with the financial services laws and the conditions of its licence;
- (b) satisfies criteria or standards set out in or made under a financial services law; or
- (c) is or has been involved in financial crime.

(2) For the purpose of such an inspection-

- (a) the inspector may enter any premises used or apparently used by the licensed non-bank financial institution for business purposes, at any reasonable time; and
- (b) inspect and make copies, or take extracts from, any relevant records, documents or things in those premises.

(3) A licensed non-bank financial institution, and its directors, officers and employees, shall afford an inspector full and free access to the premises, records and documents of the institution as are relevant to the inspection.

(4) A person who, without reasonable excuse, contravenes subsection (3) shall be liable to a civil penalty not exceeding P2,500 for each day on which the contravention occurs or continues to occur to be imposed by the Regulatory Authority.

### **56. Investigations**

(1) This section applies if an investigator-

- (a) has reasonable grounds to believe that-
  - (i) an offence under a financial services law has been or may have been committed; or
  - (ii) a licensed non-bank financial institution is not complying with, or has not complied with, a financial services law; and
- (b) suspects on reasonable grounds that a person (the "relevant person") has in its possession or under its control anything that may afford evidence relevant to the matter (the "relevant evidence").

(2) For the purpose of investigating the offence or suspected offence, the investigator may do any of the following-

- (a) subject to subsection (6), enter any premises used or apparently used by the licensed non-bank financial institution for business purposes, at any reasonable time and search for any record, document or other thing that the investigator considers may be relevant to the inspection;
- (b) inspect and make copies, or take extracts from, and where necessary in an appropriate case to take possession of, such records, documents or things;

- (c) give a direction (orally or in writing) to the licensed non-bank financial institution, to a director or employee of the institution, or to the relevant person, to produce the relevant evidence to the investigator as specified in the direction;
- (d) give a direction (oral or written) to a relevant person to do any of the following-
  - (i) produce to the investigator, at a reasonable time and place specified in the direction, any relevant evidence;
  - (ii) give the investigator explanations or further information about the relevant evidence;
  - (iii) attend before the investigator at a reasonable time and place specified by the authorised person, and answer under oath questions relating to the matter.

(3) A licensed non-bank financial institution, and its directors, officers and employees, shall afford an inspector full and free access to the premises, records and documents of the institution as are relevant to an investigation under this section.

(4) A person who, without reasonable excuse, refuses or fails to comply with a direction in terms of subsection (2) shall be liable to a civil penalty not exceeding P2,500 for each day on which the refusal or failure to comply occurs or continues to occur to be imposed by the Regulatory Authority.

(5) A person who, without reasonable excuse, says anything in answering a question put to the person by an investigator in terms of this section-

- (a) that the person knows to be false or misleading in a material particular; or
- (b) reckless as to whether it is false or misleading in a material particular, commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a period not exceeding five years, or to both.

(6) An investigator shall not enter premises in terms of subsection (2) (a) unless-

- (a) with the consent of the person apparently in charge of the premises at the time of entry; or
- (b) in accordance with a warrant under subsection (7); or
- (c) in an emergency, under subsection (9).

(7) A warrant for the purposes of this section is a warrant issued by a magistrate on application by an investigator.

(8) A magistrate shall not issue a warrant under this section unless satisfied that this section applies to the case, as provided in subsection (1).

(9) An investigator may enter premises and exercise powers under this section without the consent mentioned in subsection (6) (a) or a warrant only if there are reasonable grounds to suspect that it is necessary to do so to prevent loss or destruction of, or damage to, relevant evidence.

## **57. Investigators' powers**

An inspector or investigator acting in terms of section 55 or 56 has all the powers and protections of a Commissioner in terms of the Commissions of Inquiry Act. **Self-regulatory organisations (ss 58-64)**

## **58. Self-regulatory organisations**

(1) The Minister may by order, on the recommendation of the Regulatory Authority, declare a person or body that has functions in relation to a class of non-bank financial institutions to be a self-regulatory organisation for the purposes of this Act.

(2) The Minister shall not make a declaration in terms of subsection (1) unless the Regulatory Authority has entered into arrangements with the person or body for the performance by the person or body of regulatory or supervisory functions in relation to the class of non-bank financial institutions.

(3) The arrangements may, if the Regulatory Authority considers it appropriate, involve the delegation of the Regulatory Authority's powers under financial services laws to the self-regulatory organisation.

- (4) The arrangements shall provide for-
- (a) the supervision by the Regulatory Authority of the self-regulatory organisation's performance of regulatory or supervisory functions by the self regulatory organisation;
  - (b) the approval by the Regulatory Authority of any rules, and amendments of rules, of the self-regulatory organisation for or with respect to the matters for which the self-regulatory organisation has regulatory or supervisory functions, including such functions as delegate of the Regulatory Authority;
  - (c) the variation or termination of the arrangements where the Regulatory Authority is not satisfied that the self-regulatory organisation is performing, or is able to perform, regulatory or supervisory functions to the satisfaction of the Regulatory Authority.

#### **59. Rules of self-regulatory organisations**

(1) A self-regulatory organisation may make rules, not inconsistent with the financial services laws, for or with respect to any matters for which the self-regulatory organisation has regulatory or supervisory functions, including such functions as delegate of the Regulatory Authority.

(2) Rules made in terms of subsection (1), and amendments of such rules, are of no effect unless approved by the Regulatory Authority.

#### **60. Due process by self-regulatory organisations**

A self-regulatory organisation shall not make a decision under its rules that adversely affects the rights of a person unless-

- (a) the self-regulatory organisation has given the person an opportunity to make representations to it about the matter; or
- (b) the self-regulatory organisation considers on reasonable grounds that delay in making the decision will prejudicially affect the protection of investors and consumers of securities services.

#### **61. Reporting by self-regulatory organisations**

A self-regulatory organisation shall notify the Regulatory Authority, as prescribed, as soon as practicable after a person is appointed a director or executive of the organisation.

#### **62. Termination of arrangements and revocation of declaration**

(1) The Regulatory Authority may recommend to the Minister the revocation of a declaration in terms of subsection 58 (1) at any time, but shall not do so unless the Regulatory Authority has notified the self-regulatory organisation of its intention and the reasons for the Regulatory Authority's action, and given the organisation at least 14 days to make representations to the Regulatory Authority about the matter.

(2) The revocation of a declaration does not affect a right of a person to apply to the Tribunal in terms of section 85 for a review of a decision or action.

(3) In a case mentioned in subsection (2), the Tribunal shall send a copy of the application to the Regulatory Authority, which is entitled to be a party to the review proceedings in the Tribunal.

#### **63. Amendments to self-regulatory organisations' constitutions**

Notwithstanding anything in the Companies Act an amendment to the memorandum or articles of association, or other constituent documents, of a self-regulatory organisation is of no effect unless approved by the Regulatory Authority.

#### **64. Protections for self-regulatory organisations, etc.**

None of the following-

- (a) a self-regulatory organisation;
- (b) a director, executive or employee of a self-regulatory organisation;
- (c) a member of a committee of a self-regulatory organisation;

shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by them in the performance in good faith of their powers, functions and duties in connection with the regulatory or supervisory functions the self-regulatory organisation performs

as self-regulatory organisation, including those delegated to it by the Regulatory Authority.

***Controllers of prudentially regulated non-bank financial institutions (s 65)***

**65. Controllers of prudentially regulated non-bank financial institutions**

(1) If a person takes a step intending thereby to become a controller of a prudentially regulated non-bank financial institution, then, unless the Regulatory Authority has approved the person's becoming a controller of the institution, the person shall be liable to a civil penalty not exceeding P10,000 to be imposed by the Regulatory Authority.

(2) If-

- (a) a person is a controller of a prudentially regulated non-bank financial institution by virtue of the degree of voting power a person has or controls in relation to the institution; and
- (b) the person takes a step as a result of which the degree of voting power it controls varies by more than the percentage specified in the prudential rules,

then, unless the Regulatory Authority has approved the variation, the person shall be liable to a civil penalty not exceeding P10,000 to be imposed by the Regulatory Authority.

(3) If-

- (a) a person becomes or ceases to be a controller of a prudentially regulated non-bank financial institution; and
- (b) at the end of 14 days after the event, the change has not been reported to the Regulatory Authority in accordance with the regulations;

the person shall be liable to a civil penalty not exceeding P10,000 to be imposed by the Regulatory Authority.

(4) If-

- (a) a person is a controller of a prudentially regulated non-bank financial institution by virtue of the degree of voting power in relation to the non-bank financial institution that it has or controls;
- (b) the degree of voting power in relation to the non-bank financial institution that it has or controls varies by more than the amount prescribed by the prudential rules; and
- (c) at the end of 14 days after the event, the variation has not been reported to the Regulatory Authority in accordance with the regulations;

the person, and the prudentially regulated non-bank financial institution, each shall be liable to a civil penalty not exceeding P10,000 to be imposed by the Regulatory Authority.

(5) A variation mentioned in subsection (2) or (4) may be either by way of increase or decrease in the percentage of voting power the person has or controls.

(6) A prudentially regulated non-banking financial institution that permits a variation with respect to the position of a controller as mentioned in subsections (2), (3) or (4) without the approval of the Regulatory Authority shall be liable to a civil penalty not exceeding P50,000 to be imposed by the Regulatory Authority.

**PART V**

***Regulating market practices of non-bank financial institutions (ss 66-69)***

**66. Operation of this Part with other laws**

(1) This Part applies in addition to other laws.

(2) If a provision of this Part, or of regulations made in terms of this Part, is inconsistent with a provision of another law, the provision of this Part prevails to the extent of the inconsistency.

**67. Prohibition of false and misleading statements**

(1) A person shall not engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to financial services, including financial services provided by another person.

(2) Without limiting subsection (1), a person shall not-

- (a) falsely represent that a financial service is of a particular standard, quality, value or

- grade;
- (b) falsely represent that a particular person has agreed to acquire a specified financial service;
- (c) represent that financial services have sponsorship, approval, performance characteristics, uses or benefits they do not have;
- (d) represent that the person has, in relation to financial services, a sponsorship, approval or affiliation it does not have;
- (e) make a false or misleading representation with respect to the price of financial services;
- (f) make a false or misleading representation concerning the need for specified financial services; or
- (g) make a false or misleading representation concerning the existence, exclusion or effect of a condition, warranty, guarantee, right or remedy in relation to financial services.

(3) A person who contravenes subsection (1) shall be liable to a civil penalty not exceeding P20,000 to be imposed by the Regulatory Authority.

#### **68. Unfair practices**

(1) The Regulatory Authority may, by notice in the Gazette, determine that a specified practice in relation to financial services is an unfair practice.

(2) Before making a determination in terms of subsection (1), the Regulatory Authority shall consult any advisory committee established under a relevant financial services law, unless the Regulatory Authority is satisfied that it is necessary to make the determination urgently to protect the interests of clients and potential clients of the non-bank financial institutions concerned.

(3) A determination in terms of subsection (1) may relate to specified financial services or to financial services of a specified kind.

(4) A non-bank financial institution that engages in an unfair practice in relation to a financial service shall be liable to a civil penalty not exceeding P20,000 to be imposed by the Regulatory Authority.

#### **69. Disclosure of information**

(1) The Minister may by regulations impose requirements with respect to-

- (a) the disclosure of information to clients or other persons about financial services; and
- (b) reports to be made to the Regulatory Authority about financial institutions or financial services.

(2) A person who contravenes regulations made for the purposes of subsection (1) commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a period not exceeding five years, or to both.

### **PART VI**

#### ***Amalgamations of, transfers of business of, statutory management of and winding up of prudentially regulated non-bank financial institutions (ss 70-76)***

#### ***Compromises and arrangements and transfers of business (ss 70-72)***

#### **70. Compromises and arrangements involving prudentially regulated non-bank financial institutions**

(1) In this section-

"compromise or arrangement" means-

- (a) a compromise or arrangement in relation to a prudentially regulated non-bank financial institution, being a compromise or arrangement of a kind described in sections 232 and 234 of the Companies Act; and
- (b) any other arrangement (however described) for the amalgamation of a prudentially regulated non-bank financial institution with one or more other bodies corporate or the reconstruction of a prudentially regulated non-bank financial institution.

(2) Each prudentially regulated non-bank financial institution concerned in a proposed



compromise or arrangements shall ensure that a copy of-

- (a) all applications to a court; and
- (b) all documents to be given to members or creditors of the bodies corporate involved, either in relation to a meeting of members or creditors or otherwise;

are given to the Regulatory Authority before the application is made or the documents are sent to the members or creditors.

(3) The Regulatory Authority is entitled to be heard in any proceeding in a court in relation to a compromise or arrangement.

(4) A court shall not make an order in terms of section 232 or 234 of the Companies Act, or any order to a similar effect, in relation to a compromise or arrangement unless the Regulatory Authority has approved the compromise or arrangement in writing.

(5) Subsection (4) does not apply to an interlocutory or similar order.

(6) Regulations may make further provision about compromises and arrangements.

#### **71. Transfers of business of prudentially regulated non-bank financial institutions**

(1) None of the business of a prudentially regulated financial institution, being business in respect of which it is licensed, may be transferred to another person or amalgamated with the business of another person except under a scheme for the transfer or amalgamation that has been approved by the Regulatory Authority.

(2) A purported transfer or amalgamation contrary to subsection (1) is void.

#### **72. Sections 70 and 71 prevail over Companies Act**

If there is an inconsistency between a provision of section 70 or 71 and the Companies Act, the provisions of section 70 or 71 prevail to the extent of the inconsistency.

#### ***Statutory management (ss 73-75)***

#### **73. Appointment of statutory managers**

(1) The High Court may, on application, appoint a person to be the statutory manager of a prudentially regulated non-bank financial institution.

(2) The application may only be made by the Regulatory Authority or with the Regulatory Authority's written consent.

(3) The High Court may only make the appointment-

- (a) if satisfied that the institution requested the appointment; or
- (b) if it appears to the Court that the institution-
  - (i) is not complying with a financial services law;
  - (ii) is or is likely to be in an unsound financial position; or
  - (iii) is or may be involved in financial crime;

and the Court considers it in the interests of the clients of the institution or the financial system to make the appointment.

(4) Subject to subsection (5) the Regulatory Authority may appoint a person to be the statutory manager of a prudentially regulated non-bank financial institution but only if it appears to the Regulatory Authority that-

- (a) the institution-
  - (i) is not complying with a financial services law;
  - (ii) is or is likely to be in an unsound financial position; or
  - (iii) is or may be involved in financial crime; and
- (b) it is necessary to appoint a statutory manager urgently to protect-
  - (i) the interests of the clients of the institution;
  - (ii) the stability, fairness, efficiency and orderliness of the financial system; or
  - (iii) the safety and soundness of financial institutions.

(5) An appointment in terms of subsection (4) takes effect immediately, but the Regulatory Authority shall, as soon as practicable after the appointment and in any event within five business days after the appointment, apply to the High Court for an order confirming the appointment.

(6) On the application, the High Court shall, by order, confirm the appointment unless satisfied that the Regulatory Authority was not entitled to make the appointment, or that the grounds for making the appointment no longer exist.

(7) On an application in terms of this section, the High Court may also make further ancillary orders, including as to costs, as is just.

#### **74. Statutory management**

(1) A person is not to be appointed or hold office as a statutory manager of a prudentially regulated non-bank financial institution unless the Regulatory Authority has approved the person as the statutory manager of the institution.

(2) The statutory manager of a prudentially regulated non-bank financial institution shall-

- (a) manage the affairs of the institution to the exclusion of its directors and other managers;
- (b) have power to repudiate a contract to which the institution is a party, but only if the statutory manager considers the contract detrimental to the interests of clients of the institution; and
- (c) be entitled to receive such remuneration from the institution as the High Court orders.

(3) A repudiation of a contract in terms of paragraph (b) of subsection (2) does not affect any rights of the parties that have accrued before the repudiation.

(4) The statutory manager of a prudentially regulated non-bank financial institution shall manage the affairs of the institution with the greatest economy possible compatible with efficiency and, as soon as practicable, shall report to the Regulatory Authority-

- (a) what steps should be taken to ensure that the institution-
  - (i) complies with the financial services laws; or
  - (ii) will be financially sound; or
  - (iii) will not be involved in financial crime;
- (b) if the statutory manager considers that it is not practicable to take steps as mentioned in paragraph (a)-
  - (i) whether steps should be taken to transfer the business of the institution to another appropriate person and, if so, to whom and on what terms; and
  - (ii) whether the institution should be wound up.

(5) The statutory manager of a prudentially regulated non-bank financial institution shall comply with written directions from the Regulatory Authority in relation to his or her functions.

(6) The statutory manager of a prudentially regulated non-bank financial institution may apply to the High Court at any time for directions.

(7) The Regulatory Authority may at any time remove a statutory manager from office, and appoint a replacement, for whom the Regulatory Authority shall apply to court for an order confirming the appointment in terms of section 73 (5).

(8) The statutory manager of a prudentially regulated non-bank financial institution is not liable for a loss that the institution suffers unless it is established that the loss was caused by the statutory manager's fraud, dishonesty, negligence or wilful failure to comply with the law.

#### **75. Termination of statutory management**

If a statutory manager is appointed to a prudentially regulated non-bank financial institution, the Regulatory Authority shall ensure that such a statutory manager remains appointed until the earlier of the times when-

- (a) the Regulatory Authority is satisfied that the grounds for making the appointment no longer exist;
- (b) the Regulatory Authority applies for the institution to be wound up on the basis that it considers that the institution is insolvent and is unlikely to return to solvency within a reasonable time.

#### ***Winding up (s 76)***

#### **76. Winding up prudentially regulated non-bank financial institutions**



(1) A resolution, demand or other step to wind up a prudentially regulated non-bank financial institution is of no effect unless the Regulatory Authority has approved of such action.

(2) The Regulatory Authority may apply to the court for an order that a prudentially regulated non-bank financial institution be wound up if-

- (a) a statutory manager has been appointed to the institution; and
- (b) the Regulatory Authority is satisfied that the institution is insolvent and cannot be restored to solvency within a reasonable period.

(3) An application to a court for the winding up of a prudentially regulated non-bank financial institution (whether under the Companies Act or under another law) is not to be made except by the Regulatory Authority or with its approval.

(4) The Regulatory Authority shall not give approval in terms of subsection (3) unless-

- (a) the regulated non-bank financial institution's licence has been or is to be revoked; or
- (b) the Regulatory Authority is satisfied that adequate provision has been made to protect the interests of the clients of the institution.

## **PART VII**

### ***Enforcement of financial services laws (ss 77-81)***

#### **77. Enforceable undertakings**

(1) The Regulatory Authority may accept a written undertaking from a person in connection with a matter in relation to which the Regulatory Authority has a function under a financial services law.

(2) The person may withdraw or vary the undertaking at any time, but only with the Regulatory Authority's consent.

(3) If the Regulatory Authority considers that the person has breached the undertaking, the Regulatory Authority may apply to the High Court for an order in terms of subsection (4).

(4) If the High Court is satisfied that the person has breached the undertaking, the court may make all or any of the following orders-

- (a) an order directing the person to comply with the undertaking;
- (b) an order directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes-
  - (i) to remedy the effects of the breach; or
  - (ii) to compensate persons who have suffered loss because of the breach; or
  - (iii) to ensure that the person does not commit further breaches of the undertaking or of a financial services law;
- (c) any other order that the court considers appropriate.

(5) The Regulatory Authority shall make a copy of the undertaking available to any person who asks for it.

(6) The Regulatory Authority shall delete from the copy information that the person who gave the undertaking has asked not to be released, but only if the Regulatory Authority is satisfied that the information-

- (a) is confidential information that has a commercial value that would be diminished if it were to be released generally;
- (b) should not be disclosed because it would be against the public interest to do so; or
- (c) consists of personal details of an individual.

(7) If information has been deleted from a copy of an undertaking in terms of subsection (5), the copy shall include a note stating that the information has been deleted.

#### **78. Compensation for breaches of financial services laws**

(1) A person who suffers loss as a consequence of a contravention of a financial services law by another person (in this section called a "claimant") may recover the amount of the loss by action in a court against-

- (a) the other person; and
- (b) any person who was knowingly involved in the contravention.

(2) The Regulatory Authority may institute an action of a kind mentioned in subsection (1) on behalf of one or more claimants (in this section referred to as "representative action") if in its opinion it is proper to do so.

(3) In a representative action, the court may make any appropriate order for the conduct of the action, including orders-

- (a) for advertising the institution of the action;
- (b) for the identification of claimants; and
- (c) in respect of claimants who do not wish to pursue their claims through the action.

(4) If-

(a) the Regulatory Authority institutes a representative action in respect of a loss suffered by a claimant; and

(b) the claimant, either before or after the representative action is instituted but before it is determined, institutes an action in terms of this section in respect of the same loss, the claimant is not entitled to recover in the representative action, and the court may make any appropriate order for the conduct of the relevant actions.

(5) The Regulatory Authority has the conduct of a representative action to the exclusion of the claimants concerned, and may withdraw, abandon or compromise the action, but an agreement or compromise of the action is subject to the approval of the court.

(6) In a representative action, if the court orders the payment of compensation, it may, in addition, if the court thinks fit, order a defendant to pay-

- (a) a penalty for punitive purposes not exceeding ten times the amount of the profit or gain that may have accrued to the defendant by the contravention, and
- (b) interest on any amount ordered to be paid.

(7) A judgment in a representative action binds all claimants other than-

- (a) those that the court has by order excluded from the action (in terms of subsection (3) (c) or otherwise); and
- (b) claimants mentioned in subsection (4).

(8) Any amount recovered by the Regulatory Authority in a representative action shall be deposited into a specially designated account established by the Regulatory Authority with the Bank of Botswana, and thereupon-

- (a) the Regulatory Authority is, as a first charge against the account, entitled to reimbursement of all expenses reasonably incurred in bringing the representative action and in administering the distributions made in terms of this subsection;
- (b) the Regulatory Authority shall take reasonable steps to identify claimants and determine the amount of their losses in connection with the contravention, including publishing the order of the court; and
- (c) the balance of the amount recovered, after making provision for expenses mentioned in paragraph (a), ("distributable balance") shall be distributed among the claimants so that each claimant is paid the amount worked out using the formula-

$$\frac{\text{amount of the claimant's loss}}{\text{total amount of all claimants' losses}} \times \text{distributable balance}$$

(9) A person knowingly involved in the contravention concerned is not entitled to a distribution in terms of subsection (8).

(10) Distributions may be paid in stages.

(11) The surplus of the distributable balance not paid at the end of three years after the first payment in terms of subsection (8) becomes funds of the Regulatory Authority.

## **79. Administrative penalties**

(1) If the Regulatory Authority is satisfied on reasonable grounds that a person has contravened a financial services law for which a civil penalty is to be imposed by the Regulatory Authority, the Regulatory Authority may give the person a notice doing one or more of the

following-

- (a) giving the person a written warning;
- (b) directing the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes-
  - (i) to remedy the effects of the contravention;
  - (ii) to compensate persons who have suffered loss because of the contravention;
  - (iii) to ensure that the person does not commit further contraventions of financial services laws;
- (c) imposing a civil penalty as stipulated in the provision contravened.

(2) Without limiting subsection (1) (b), a direction may require the establishment of compliance programs, corrective advertising or (in the case of a direction to a non-bank financial institution) changes in the management of the institution.

(3) Before taking action in terms of subsection (1), the Regulatory Authority shall give the person written notice of the proposed action, specifying the grounds for it and the facts supporting those grounds, and allowing 21 days after the notice is given for the person to ask for a hearing on the matter.

(4) If the person requests a hearing on the matter, the Regulatory Authority shall hold a hearing before taking the action, and such hearing shall be held in private unless the person consents to the hearing being held in public.

(5) A person to whom a notice in terms of subsection (1) has been given who fails or refuses to comply with the direction commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a term not exceeding five years, or to both.

(6) A civil penalty imposed under this Act is recoverable as a fine imposed by a court under section 303 (1) to (4) (inclusive) of the Criminal Procedure and Evidence Act, and an affidavit sworn by a member or employee of the Regulatory Authority is sufficient proof of the lawful imposition of the monetary penalty to enable a court to issue a warrant under that section, but no warrant is to be issued until any review under Part IX in relation to the matter has been disposed of or the time for applying for such a review has expired.

## **80. Powers of High Court**

(1) Where a person is engaged, or proposes to engage, in conduct in contravention of a financial services law, the High Court may, on application by the Regulatory Authority or a person authorised by the Regulatory Authority, make orders for the purposes of enforcing the financial services law.

(2) Without limiting subsection (1), an order may direct the person to do a specified act, or refrain from doing a specified act, for one or more of the following purposes-

- (a) to remedy the effects of the contravention;
- (b) to preserve the assets of a relevant financial institution;
- (c) to compensate persons who have suffered loss because of the contravention;
- (d) to ensure that the person does not commit further contraventions of financial services laws.

(3) The court may make an interim order pending the determination of an application, but the Regulatory Authority is not to be required, as a condition of the making of an interim order, to give an undertaking as to damages.

(4) The power of the court under this section may be exercised-

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

(5) This section is in addition to any other power of the High Court.

## **81. Exemptions and modifications of financial services laws for non-bank financial institutions**

(1) The Regulatory Authority may, by notice in the *Gazette*-

- (a) exempt a non-bank financial institution wholly or partly, as specified in the notice, from a financial services law; or
  - (b) declare that a financial services law applies in relation to a non-bank financial institution as modified in the declaration.
- (2) An exemption or declaration may-
- (a) apply generally or to a specified case or class of cases; or
  - (b) apply unconditionally or subject to specified conditions.

## **PART VIII**

### ***Powers relating to the International Financial Services Centre (ss 82-88)***

#### **82. Application of Part**

This Part applies to a non-bank financial institution that has applied for, or has been issued with, a tax certificate.

#### **83. Enforcement of IFSC rules**

(1) A non-bank financial institution shall comply with the conditions, if any, imposed on its tax certificate.

(2) The functions and powers of the Regulatory Authority in relation to a non-bank financial institution to which this Part applies may be performed and exercised for the purpose of enforcing Part XVI of the Income Tax Act.

#### **84. Power to recommend revocation of tax certificate**

(1) The Regulatory Authority may, if it is satisfied that-

- (a) a non-bank financial institution has failed or refused to comply with the conditions imposed on its tax certificate; or
- (b) grounds exist for the revocation of a licence granted to a non-bank financial institution under a financial services law, recommend to the Minister that the institution's tax certificate be revoked.

(2) The Regulatory Authority shall not act in terms of subsection (1) in relation to a non-bank financial institution unless-

- (a) the Regulatory Authority has given the institution written notice of the proposed action, setting out the reasons for the proposed action and stating that the institution has a specified period (within 21 days) to make representations to the Regulatory Authority about the matter; and
- (b) the Regulatory Authority has taken into account any representations made by or for the institution within that period.

## **PART IX**

### ***Review of decisions by the Tribunal (ss 85-88)***

#### **85. Establishment of Tribunal**

(1) There shall be established a Tribunal which shall be responsible for reviewing decisions made by the Regulatory Authority or self-regulatory organizations under this Act.

(2) Regulations may provide for the constitution, composition and jurisdiction of the Tribunal.

#### **86. Review of decisions**

Every decision of the Regulatory Authority, or of a self regulatory organisation, made in terms of sections 4(3), 43, 45, 46, 53, 62 and 84 may be subject to a review by the Tribunal.

#### **87. Application for review of decisions**

(1) A person aggrieved by, or whose interests are affected by, a decision referred to in section 86 may apply to the Tribunal for a review of the decision.

(2) An application to the Tribunal for a review of a decision shall be made within 28 days of the making of the decision.

(3) The Tribunal may, on application extend that period, either before or after it has ended, and may do so in terms it thinks proper.

#### **88. Implementation of decisions pending review**

An application for a review of a decision shall not affect the operation of the decision but the Tribunal may, on application, suspend the operation of the decision as specified by, and on terms determined by, the Tribunal.

## **PART X**

### ***Miscellaneous (ss 89-105)***

#### **89. Advisory bodies**

The Minister may, on the recommendation of the Regulatory Authority, by order, establish advisory bodies to assist it in the performance of its functions under this Act.

#### **90. Requirement to answer questions**

A person who, without reasonable excuse, fails to answer a question put to the person by the Regulatory Authority or an investigator in the performance of functions under a financial services law shall be liable to a civil penalty not exceeding P10,000 to be imposed by the Regulatory Authority.

#### **91. Requirement to comply with directions**

A person who, without reasonable excuse, fails to comply with a direction, order or requirement given to the person under a financial services law shall be liable to a civil penalty not exceeding P20,000 to be imposed by the Regulatory Authority.

#### **92. False and misleading statements to Regulatory Authority**

(1) A person who-

- (a) makes a statement to the Regulatory Authority;
- (b) gives information to the Regulatory Authority;
- (c) authorises another person to make a statement to the Regulatory Authority, or give information to the Regulatory Authority; or
- (d) in connection with an application for a licence, omits to state any thing, knowing that, because of the omission, the statement, information or application is misleading in a material respect shall be liable to a civil penalty not exceeding P30,000 to be imposed by the Regulatory Authority.

#### **93. False statements**

A person who, for any purpose connected with a financial services law-

- (a) knowingly makes a false statement; or
- (b) produces or gives, or causes or knowingly allows to be produced or given, a document that the person knows or ought reasonably to have known to be false in a material particular,

shall be liable to a civil penalty not exceeding P30,000 to be imposed by the Regulatory Authority.

#### **94. Self-incrimination not a reasonable excuse**

(1) A person who is required under a financial services law to answer a question or produce a document or thing is not excused from the requirement because compliance may tend to incriminate him or her.

(2) However, if the person objects on that ground to complying, the answer, document or other thing given in compliance with the requirement is not admissible against him or her in a prosecution for an offence (except a prosecution for an offence of failing or refusing to comply with the requirement, or giving false or misleading information in purported compliance with the requirement).

#### **95. Offence of holding out as licensed, etc.**

A person who does any of the following-

- (a) not being licensed as a non-bank financial institution - describes or holds himself or herself out as so licensed;
- (b) not being licensed as a non-bank financial institution of a particular kind - describes or holds himself or herself out as being a non-bank financial institution of that kind;
- (c) permits another person to do anything mentioned in paragraph (a) or (b),



commits an offence and on conviction is liable to a fine not exceeding P10,000 or to imprisonment for a period not exceeding two years, or to both.

#### **96. Destruction of documents**

A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, a document or thing that the person knows or ought reasonably to have known is relevant to the performance or exercise of the Regulatory Authority's functions or powers commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a period not exceeding five years, or to both.

#### **97. Hindering Regulatory Authority, etc.**

A person who, without lawful excuse, obstructs or hinders-

- (a) the Regulatory Authority;
- (b) a member or employee of the Regulatory Authority; or
- (c) an investigator or statutory manager,

in exercising powers or performing functions under a financial services law commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a period not exceeding five years, or to both.

#### **98. Preventing compliance**

A person who knowingly hinders or prevents compliance with a direction, order or requirement given under a financial services law commits an offence and on conviction is liable to a fine not exceeding P50,000 or to imprisonment for a period not exceeding five years, or to both.

#### **99. Extension of time**

The Regulatory Authority may, on application, extend any time for compliance with, or a period prescribed by, a provision of a financial services law, and may do so before or after the time for compliance or the period prescribed has passed.

#### **100. Evidence**

A statement in writing signed by the Chief Executive Officer-

- (a) that a specified person was or was not, at a specified time, licensed; or
- (b) that a specified person was or was not, at a specified time, an investigator,

is admissible in evidence of the facts and matters stated in the certificate and, unless the contrary is established, is conclusive as to those facts and matters.

#### **101. Conduct of directors, servants and agents**

(1) Where it is necessary to establish, for the purposes of a financial services law, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that-

- (a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) the director, employee or agent had the state of mind.

(2) A reference in subsection (1) to the state of mind of a person includes a reference to-

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(3) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

#### **102. Liability of directors, etc.**

Where an offence against a provision of this Act is committed by a body corporate, each director of the body corporate also commits the offence and on conviction is liable to the same penalty unless the director establishes that he or she took reasonable precautions and exercised due diligence to avoid the commission of the offence.

#### **103. Offence committed partly within and partly beyond Botswana**

When an act that, if wholly done within Botswana, would be an offence against a financial services law, is done partly within and partly beyond Botswana, every person who within Botswana does any part of such act may be tried and punished under the financial

services law in the same manner as if such act had been done wholly within Botswana.

#### **104. Penalties for bodies corporate**

Where a body corporate is convicted of an offence against a financial services law, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 10 times the amount of the maximum pecuniary penalty that could be imposed by the court on an individual convicted of the same offence.

#### **105. Regulations**

(1) The Minister may by statutory instrument make regulations providing for any matter which under this Act is to be provided for by regulations or is to be prescribed or which, in the Minister's 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 or effect to its provisions or for its better administration.

(2) Regulations made in terms of subsection (1) may provide for any of the following-

- (a) the form of any document referred to in this Act and the way in which it is to be prepared, executed, registered, transmitted or delivered;
- (b) fees to be charged in respect of any act, matter or thing to be done by or in relation to the Regulatory Authority;
- (c) matters to be included in the document submitted with an application for a licence and procedures for considering those applications;
- (d) the appointment of an actuary or auditor for a non-bank financial institution;
- (e) reports to the Regulatory Authority or to the non-bank financial institution by an actuary or auditor;
- (f) the submission to the Regulatory Authority of financial statements, reports, statistics, accounts and other documents.

### **PART XI**

#### ***Transitional and consequential provisions (ss 106-107)***

#### **106. Existing licences and registrations preserved**

(1) A person who was licensed or registered in terms of a financial services law immediately before Part III commences shall be taken to be licensed in terms of this Act, on the same terms, the licence terminating-

- (a) at the end of 12 months after Part III commences; or
- (b) if, but for this Act, the licence would terminate on an earlier day, on that earlier day.

(2) Subsection (1) does not apply in respect of provisional registration as a pension or provident fund under the Pension and Provident Funds Act.

(3) If-

- (a) a person resident in Botswana is lawfully carrying on an activity immediately before Part III commences;
- (b) the person was not, at that time, required to be licensed or registered under a financial services law other than this Act in relation to carrying on the activity; and
- (c) the person applies for a licence within 6 months after Part III commences;

section 42 does not prevent the person from carrying on the activity until the application is finally determined.

### **CHAPTER 59:01 NATIONAL MUSEUM AND ART GALLERY ARRANGEMENT OF SECTIONS**

#### **SECTION**

- 1. Short title
- 2. Interpretation
- 3. Establishment of a National Museum and Art Gallery



4. Administration
5. Establishment of a Board
6. Meetings of the Board
7. Functions of the Board
8. General duty of Minister
9. Regulations

Act 28, 1967,  
Act 1, 1968,  
Act 46, 1970,  
Act 16, 1976,  
S.I. 12, 1977.

## **An Act to make provision for the establishment of a National Museum and Art Gallery.**

*[Date of Commencement: 29th September, 1967]*

### **1. Short title**

This Act may be cited as the National Museum and Art Gallery Act.

### **2. Interpretation**

In this Act, unless the context otherwise requires-

"**Board**" means the National Museum and Art Gallery Board established under section 5;

"**museum**" includes a craft village;

"**National Museum and Art Gallery**" means the National Museum and Art Gallery established under section 3.

### **3. Establishment of a National Museum and Art Gallery**

The Minister may, after consultation with the Board, establish such museum and art gallery facilities, to be called the National Museum and Art Gallery, as in his opinion are desirable in order to further the provision of an efficient museum and art gallery service in Botswana.

### **4. Administration**

Subject to the provisions of this Act, the administration of the National Museum and Art Gallery shall be vested in the Minister, who shall perform his functions under this Act, in consultation with the Board.

### **5. Establishment of a Board**

(1) For the purposes of this Act, there shall be established a Board to be styled the National Museum and Art Gallery Board.

(2) The Board shall consist of a Chairman and not more than six other members appointed by the Minister, together with such other members as may be co-opted by the Board under subsection (3).

(3) The Board may, with the approval of the Minister, co-opt as members not more than three persons with such expert knowledge or experience as may be required by the Board in the discharge of its functions.

(4) The period of office of a member of the Board shall be-

- (a) in the case of the Chairman or any member appointed under subsection (2), three years from the date of his appointment; and
- (b) in the case of a member co-opted under the provisions of subsection (3), the period, not being a period in excess of one year, for which he has been co-opted.

(5) The Chairman and any member of the Board may resign from the Board at any time by letter addressed to the Minister; and the Minister may at any time revoke any appointment which he has made.

(6) Any member of the Board who has not, on the 31st December in any year, attended

at least one-third of the meetings of the Board during the preceding 12 months or during his tenure of office in such months, shall be considered to have vacated his seat on the Board, unless he has been absent owing to ill-health or with the leave of the Minister.

#### **6. Meetings of the Board**

(1) The Board shall meet at such times as may be necessary or expedient for transacting its business.

(2) The Chairman may at any time summon a meeting of the Board, and, on the requisition of the Minister or any three members he shall summon a meeting and any such requisition shall state the object for which the meeting is required to be summoned.

(3) The views or decisions of the Board may be taken at meetings or, in cases in which the Chairman shall so direct, by the recording of the opinions of members on papers circulated among them.

(4) The Chairman may direct that papers shall not be circulated in accordance with the provisions of subsection (3) to any member who through interest, illness, absence from Botswana or otherwise is, in the opinion of the Chairman, incapacitated from voting on such papers.

(5) The quorum of the Board at any meeting or for the purpose of voting on papers circulated in accordance with the provisions of subsection (3) shall be four.

(6) The decisions of the Board shall be by the majority of votes and in any case in which the voting is equal the Chairman shall have a second or casting vote.

#### **7. Functions of the Board**

(1) The functions of the Board shall be-

- (a) to advise the President and Minister in the exercise of their functions under this Act;
- (b) to undertake such administrative functions in connection with the National Museum and Art Gallery as the Minister may from time to time require it to undertake.

(2) The Board may, for the purpose of furthering the provision of an efficient museum and art gallery service in Botswana, enter into mutual arrangements with other museums or art galleries within or without Botswana.

#### **8. General duty of Minister**

It shall be the duty of the Minister acting in consultation with the Board and within the limits of the means available to him, to provide a comprehensive and efficient museum and art gallery service for all persons desiring to make use thereof, and for that purpose to provide and maintain such buildings and equipment and do such other things as may be requisite.

#### **9. Regulations**

(1) The Minister may make regulations either generally or in relation to any particular museum or art gallery facilities established under this Act-

- (a) for the control and management of any museum or art gallery and the use of its facilities including the payment of charges and fees in respect thereof;
- (b) for the establishment, functions and duties of museum or art gallery committees;
- (c) safeguarding the contents of any museum or art gallery;
- (d) generally for the better carrying out of the provisions of this Act.

(2) Any regulation made under the provisions of subsection (1) may provide in the event of its contravention for the imposition of a fine not exceeding P100 or for imprisonment for a term not exceeding three months, or to both.

### **VOLUME XV CHAPTER 69:01 ROAD TRAFFIC**

#### **ARRANGEMENT OF SECTIONS**

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##### *Preliminary*

##### **SECTION**

1. Short title
2. Interpretation
3. Appointment of officers
4. Classification of motor vehicle

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6. Motor vehicles and trailers to be registered
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8. Owner of vehicle
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10. Registration of vehicles imported into Botswana
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14. Offences and penalties
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Act 6, 2001,  
Act 13, 2002.

**An Act to provide for the registration and licensing of motor vehicles; for the issue of driving licences; for the creation of offences relating to the use of vehicles and for the regulation of traffic; and for matters incidental thereto.**

*[Date of Commencement: 1st January, 1975]*

## **PART I**

### ***Preliminary (ss 1-4)***

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

This Act may be cited as the Road Traffic Act.

#### **2. Interpretation**

(1) In this Act, unless the context otherwise requires-

**"articulated vehicle"** means a combination of vehicles comprising a motor vehicle and semi-trailer coupled to the motor vehicle;

**"authorized officer"** means a person specially or generally authorized by the Minister for the matter in question;

**"bridge"** includes culvert and causeway;

**"bus"** means a motor vehicle having seating accommodation for more than 30 passengers and not more than 100 passengers on a single deck, exclusive of the driver;

**"call-cab"** means a light motor vehicle having seating capacity for not more than four passengers, exclusive of the driver, and available for hire or operated for reward from a defined private place;

**"carriageway"** means the part of a road normally used by vehicular traffic, including those portions commonly known as the shoulders, but excluding any portion of any such road which is set aside for use by pedestrian traffic;



**"cattle"** includes oxen, bulls, cows, horses, camels, mules, donkeys, sheep, goats and swine;

**"combination of vehicles"** means coupled vehicles which travel on the road as a unit;

**"commercial vehicle"** means a motor vehicle wholly or primarily constructed or adapted for the carriage of goods or burdens of any description in connection with any trade, business or agriculture, but does not include any type or class of motor vehicle which the Director may, by notice in the *Gazette*, declare not to be a commercial vehicle for the purposes of this Act;

**"cycle"** means any vehicle with one or more wheels which is propelled by the muscular energy of the driver acting on the pedals;

**"Director"** means the Director of Road Transport and Safety appointed under section 3;

**"double-deck bus"** means a bus having an upper and lower deck with seats exceeding 100 passengers, exclusive of the driver;

**"drive"**, in relation to a vehicle, includes the steering of such vehicle;

**"driver"**, in relation to a vehicle, means any person who drives or guides, or is in actual physical control of, any vehicle, and in relation to cattle, means the person in charge or control of the cattle;

**"driving licence"** means a licence to drive a motor vehicle issued under this Act, and any document deemed to be a driving licence by virtue of any regulations made under this Act;

**"driving test examiner"** means any person appointed to be a driving test examiner under section 3(1)(b);

**"gross vehicle mass (GVM)"** means the maximum weight of a vehicle and its load as specified by the manufacturer or, in the absence of such specification, as determined by a competent authority;

**"hazardous goods"** means dangerous goods or substances which shall include but not be limited to packages, unit load, bulk containers, bulk transportation equipment, petroleum-based flammable liquids and other objects that are considered hazardous or dangerous in terms of the following Acts-

- (a) Explosives Act;
- (b) Fire Services Act;
- (c) Mines and Minerals Act;
- (d) Wildlife Conservation and National Parks Act;
- (e) Atmospheric Pollution (Prevention) Act; or
- (f) Arms and Ammunition Act.

**"heavy commercial vehicle"** means a commercial vehicle the permissible maximum gross weight of which exceeds 3 500 kilograms;

**"heavy motor vehicles"** has the meaning ascribed to it by section 4(2)(c);

**"heavy trailer"** means a trailer of a GVM exceeding 750 kg;

**"identification plate"** means one of the prescribed number of identification plates required to be carried on a motor vehicle under section 11 or section 24;

**"invalid carriage"** means a motor vehicle specially designed and constructed for the use of persons suffering from some physical defect or disability;

**"laden weight"** means the actual weight of the vehicle as loaded, with the crew and passengers on board;

**"licensing officer"** means a licensing officer appointed under section 3(2);

**"light trailer"** means any trailer of a GVM not exceeding 750 kg;

**"light vehicle"** means a motor vehicle other than a motor cycle having a permissible maximum weight not exceeding 3 500 kilograms;

**"light commercial vehicle"** means a commercial vehicle having a permissible maximum weight not exceeding 3 500 kilograms;

**"main road"** means any road declared to be a main road under section 100;

**"mini-bus"** means a motor vehicle having seating capacity for more than 11 but not more than 15 passengers, exclusive of the driver;

**"midi-bus"** means a motor vehicle having seating capacity for more than 15 passengers but not more than 30 passengers, exclusive of the driver;

**"motor car"** means a motor vehicle having seating accommodation for not more than 11 passengers excluding the driver, but does not include a motor cycle;

**"motor cycle"** means a two- or three-wheeled vehicle the unladen weight of which does not exceed 400 kilograms and which is equipped with a propelling engine;

**"motor dealer"** means any person who deals by way of business in motor vehicles or trailers including a manufacturer and a repairer of such vehicles;

**"motor dealer's licence"** means a licence issued under section 23;

**"motor omnibus"** means-

- (a) a public service vehicle having seating accommodation for more than seven passengers exclusive of the driver; or
- (b) a motor vehicle having seating accommodation for more than 11 passengers exclusive of the driver;

**"motor vehicle"** means any vehicle, self-propelled by mechanical or electrical power, but excluding any vehicle running on a specially prepared way such as a railway or tramway or cables and such other vehicles as the Minister may, from time to time by notice published in the *Gazette*, declare not to be motor vehicles for the purposes of this Act;

**"motor vehicle examiner"** means any person appointed to be a motor vehicle examiner under section 3(1)(b);

**"motor vehicle licence"** means a motor vehicle licence issued under Part III;

**"owner"**, in relation to a vehicle, includes the owner, joint owner or part owner of a vehicle and, where a vehicle is the subject of a hire-purchase agreement or hiring agreement, includes the person in possession of the vehicle under that agreement;

**"physically disabled"** means any person driving a light motor vehicle with automatic transmission and adapted and clearly marked with a badge for driving by handicapped persons and which may make use of the facility, road, or portion of the road indicated by an appropriate road sign;

**"plying for hire"** includes-

- (a) standing on any public taxi stand;
- (b) being offered for hire by any notice, advertisement or announcement, or any express or implied invitation;
- (c) standing or travelling whilst exhibiting a "For Hire" notice of any kind;

**"Professional Driving Permit (PrDP)"** means, respectively, one of the permits issued under section 106;

**"provisional licence"** means a licence to drive a motor vehicle issued under section 32;

**"private hire vehicle"** means any public service vehicle having seating accommodation for not more than seven passengers, exclusive of the driver, such vehicle not being a taxicab;

**"public service vehicle"** means any vehicle which is licenced under Part XIII to-

- (i) carry passengers or goods for hire or reward or on own account; or
- (ii) ply for hire or reward or is let out for hire or reward;

**"public service vehicle driver's licence" or "public service vehicle conductor's licence"** means respectively one of the licences issued under section 110;

**"qualified person"** means a pathologist, police officer, medical practitioner, laboratory technician, intern or houseman, forensic analyst, laboratory scientist or registered nurse of or above the rank of staff nurse or such other person as the Minister may prescribe;

**"registered owner"** means the person in whose name a vehicle is registered under section 6;

**"registration book"** means the registration book issued by the Director in respect of a

vehicle under section 6(5);

**"registration number"** means the number allocated to a vehicle when it is registered under section 6(5);

**"road"** means the entire surface of any way, road, street, thoroughfare, wharf, car park, footpath, bridle-path or road reserve on which a vehicle is capable of travelling and to which the public have access, and includes-

- (a) any bridge, drift, ford or ferry traversed thereby;
- (b) any road established, proclaimed or recognised as such under the provisions of any written law; and
- (c) any road however created which, before or after the commencement of this Act, has been in the undisturbed use of the public or which the public has had the right to use during a period of not less than three years:

Provided that in any prosecution under this Act the road on which the offence is alleged to have occurred shall be presumed to be a road to which the public has access, or which has been in the undisturbed use of the public, or which the public have had a right to use, for not less than three years, unless the contrary is proved;

**"road authority"**, where a road in any area or district has been lawfully vested in a local authority or any other person, means such local authority or such person, and where a road has not been so vested means such public officer as the Minister may, by notice published in the *Gazette*, appoint to be the road authority for that road for the purposes of this Act;

**"school-bus"** means a motor vehicle used solely for the conveyance of school children from place of abode to a school and vice versa or to undertake extra-curricula activities;

**"tare weight"** means the weight of a vehicle when unladen without the crew, passengers or load, but with a full standard supply of fuel and with the tools and spare parts which the vehicle normally carries;

**"taxi"** means any public service vehicle having seating accommodation for not more than four passengers, excluding the driver, which is licensed under this Act or any other written law relating to the licensing and operation of taxi to ply for hire from a taxi rank or other public place;

**"tractor"** means a motor vehicle constructed or adapted for the purpose of hauling trailers but which is not itself designed to carry goods or passengers;

**"traffic sign"** means any sign, signal, signpost, notice, light or other device or object, whether fixed or portable, erected or in any way displayed upon or adjacent to any road by or with the consent of the road authority, for the purpose of warning, regulating, restricting or prohibiting traffic and vehicles of any kind on a road and includes any line, mark, words or other sign on the surface of the road for conveying such warning, regulation, restriction or prohibition:

Provided that all traffic signs shall conform to any regulations as to size, colour and type which may be prescribed under this Act;

**"trailer"** means any vehicle without motive power designed to be drawn by a motor vehicle, whether or not part of the trailer is superimposed on the drawing vehicle, but does not include a sidecar attached to a motor cycle;

**"train-bus"** means a bus which-

- (i) consists of two sections connected to form a unit;
- (ii) can swivel in a horizontal plane at the connection between such sections; and
- (iii) is designed or adapted solely or principally for the conveyance of at least 100 passengers, exclusive of the driver;

**"unladen weight"** means the weight of the vehicle without crew, passengers or load, but with a full supply of fuel, oil, grease, spare wheel and with the tools which the vehicle normally carries.

**"vehicle"** means any conveyance or structure which is designed to be propelled or drawn on land, and includes a motor vehicle, a trailer and an aircraft when such aircraft is

stationary or in motion upon a road, but excludes a conveyance propelled or drawn by a human being and designed and used for transporting infants or infirm persons.

(2) A vehicle shall for the purposes of this Act or any regulations made thereunder be deemed to be used when it is on a road, whether it is stationary or moving, and a person shall be deemed to use a vehicle if he is the owner thereof, or is the person in possession, charge or control thereof, or is the driver thereof or if he is the person who caused it to be used.

### **3. Appointment of officers**

(1) The Minister shall, by notice published in the *Gazette*, appoint-

- (a) a Director of Road Transport and Safety, who shall have such duties relating to the administration of this Act, as the Minister may, from time to time, determine, which duties the Director may, with the consent of the Minister, delegate to any public officer;
- (b) such motor vehicle examiners and driving test examiners as may be necessary for carrying out the purposes and provisions of this Act and any regulations made thereunder.

(2) The Director shall, by notice published in the *Gazette*, appoint such licensing officers as may be necessary for carrying out the purposes and provisions of this Act.

### **4. Classification of motor vehicle**

(1) This Act shall apply to all motor vehicles and other traffic on a road and other surfaces normally used by motor vehicles.

(2) For the purposes of this Act and any regulations made thereunder, motor vehicles shall be divided into the following classes-

- (a) motor cycles-
  - (i) (A1) not exceeding 125 cubic centimetres (cc) engine capacity and not exceeding 230 kg GVM;
  - (ii) (A) exceeding 125 cubic centimetres engine capacity or 230 kg GVM;
- (b) light motor vehicles-
  - (B) light motor vehicles not exceeding 3500 kg GVM;
- (c) heavy motor vehicles-
  - (i) (C1) heavy motor vehicles with GVM exceeding 3500 kg GVM but not more than 16000 kg GVM;
  - (ii) (C) heavy motor vehicles with GVM exceeding 16000 kg;
- (d) combination of vehicles-
  - (i) (EB) combination of vehicles with a light motor vehicle not exceeding 3500 kg GVM and a light trailer (exceeding 750 kg GVM);
  - (ii) (EC1) combination of vehicles with a heavy motor vehicle exceeding 3500 kg GVM but not exceeding 16000 kg with a trailer not exceeding 750 kg GVM; and
  - (iii) (EC) combination of vehicles with a heavy motor vehicle exceeding 16000 kg GVM and one or more trailers exceeding 750 kg GVM;
- (e) tractors-
  - (F) a motor vehicle constructed or adapted for the purpose of hauling trailers but which is not itself designed to carry goods or passengers;
- (f) Professional Driving Permit [PrDP "P" (Passengers), "G" (Goods) "H" (Hazardous)]-
  - (i) the vehicle classes to which the PrDP "P" shall apply include call-cab, taxi, mini-bus, midi-bus, school bus, bus, train-bus, double-deck bus, and special;
  - (ii) the vehicle classes to which the PrDP "G" shall apply include a motor vehicle other than a motor cycle or motor car, designed or adapted for the conveyance of goods and in the process of loading or off-loading goods on a public road for hire and reward or on own account;
  - (iii) the vehicle classes to which the PrDP "H" shall apply include any vehicle used for the conveyance of hazardous substances.
- (g) special types-
  - (H) motor vehicles as may be specially authorised by the Director.

**PART II**  
***Registration of Vehicles (ss 5-15)***

**5. Records of vehicles**

(1) The Director shall keep records of all motor vehicles and trailers registered in Botswana, and shall cause every licensing officer to keep records of all vehicles registered by him.

(2) Vehicle records maintained by the Director or a licensing officer shall be open for inspection by any police officer, and any other person duly authorized by the Minister, who shall be entitled to copy any entry in such records free of charge.

(3) Any person who satisfies the Director that he has reasonable cause therefor shall be entitled, on payment of the prescribed fee, to a copy of any entry in such vehicle records.

**6. Motor vehicles and trailers to be registered**

(1) No person shall own, possess or use a motor vehicle or trailer unless such motor vehicle or trailer is registered under this Act:

Provided that this subsection shall not apply in the case of-

- (i) an unregistered vehicle which is owned by and in the possession of a motor dealer for the purposes of sale;
- (ii) a vehicle which is lawfully used under the authority of and in accordance with the conditions of a motor dealer's licence issued under section 23;
- (iii) a vehicle which is being driven to or from any place specified by a licensing officer for inspection or testing, or while it is being tested by a motor vehicle examiner;
- (iv) a vehicle lawfully brought into Botswana in accordance with any regulations made by the Minister under section 130; or
- (v) a vehicle exempted under the provisions of this Act.

(2) Application for the registration of any motor vehicle or trailer shall be made to a licensing officer in the prescribed form and shall be accompanied by the prescribed fee:

Provided that where a person satisfies the licensing officer that he has been authorized in writing for the purpose of this section, by a person who is absent from Botswana to make application on his behalf for the registration of a vehicle, the application form may be signed by the person so authorized.

(3) Before registering a motor vehicle or trailer a licensing officer shall, if the vehicle or trailer is over three years old at the time of application, or may in any other case if he thinks fit, require the vehicle or trailer to be inspected by a motor vehicle examiner in order to satisfy himself that the vehicle or trailer is in a fit and proper condition for the purpose for which it is intended to be used, and conforms in all respects to the requirements of this Act.

(4) If an application is made to register a motor vehicle or trailer the weight or load capacity of which has not been declared by the manufacturers of the chassis, the licensing officer shall not register the vehicle until a motor vehicle examiner has determined its weight and load capacity, such determination being final.

(5) The licensing officer shall, on being satisfied as to the accuracy of the particulars contained in a form of application for the registration of a motor vehicle or trailer and as to the other matters regarding which he is required to be satisfied under this section, issue to the owner of the vehicle and in his name a registration book in the prescribed form containing the registration number allocated to the vehicle and particulars of the vehicle.

(6) A registration book or duplicate thereof issued under this section shall be proof of the registration of the vehicle, the name of the registered owner and the registration number of the vehicle.

(7) The licensing officer shall furnish the Director with details of the contents of every registration book issued under this section and the Director shall enter those details in his records.

(8) If a registration book has been lost, destroyed, or defaced, or the particulars thereon



have become illegible, the owner of the vehicle shall apply in the prescribed form for a duplicate thereof, and the Director shall, if satisfied as to such loss, destruction, defacement or illegibility, and upon payment of the prescribed fee, issue a duplicate of the said registration book:

Provided that-

- (i) the Director shall cancel and destroy any defaced or illegible registration book; and
- (ii) where any registration book which has been lost is subsequently found such book, or the duplicate thereof, shall forthwith be returned to the Director for cancellation and destruction.

(9) In the event of any change of circumstances which affects the accuracy of the registered particulars of a motor vehicle or trailer, the owner thereof shall forthwith inform the Director of such change, shall forward to him the registration book in order that it may be amended or cancelled, and shall supply the Director with any further information that may be required. If any registered motor vehicle or trailer is broken up, stolen, destroyed, or becomes permanently unfit for use as a motor vehicle or trailer, or is removed permanently from Botswana, the Director shall cancel the registration of the vehicle.

(10) If a licensing officer has reason to believe that a motor vehicle or trailer in respect of which registration has been applied for is or may be of a type not previously registered, or is of a type so registered but constructed according to different specifications, he may refuse to register the vehicle until plans or specifications thereof have been submitted to and approved by the Director.

## **7. Inspection fee**

Where a vehicle is required to be inspected by a motor vehicle examiner under the provisions of this Part, the owner of such vehicle shall, before any inspection is carried out, pay the prescribed fee to a licensing officer.

## **8. Owner of vehicle**

The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle for the purposes of this Act, or for the purpose of any criminal or civil proceedings arising under or by virtue of this Act.

## **9. Change of ownership**

(1) A vehicle, the ownership of which has been transferred by the registered owner thereof, shall not be used on a road for more than seven days after the date of such transfer unless the new owner is registered as the owner thereof.

(2) Upon the transfer of ownership of a vehicle, the registered owner thereof shall immediately deliver to the new owner the registration book in respect of the vehicle and the new owner shall within seven days immediately after the delivery to him of the registration book deliver the same together with the prescribed fee to a licensing officer in order that the vehicle may be registered in his name.

(3) Subsections (1) and (2) shall not apply to a change of possession consequent on a contract of hiring where the period of hiring does not exceed three months, or where the registered owner continues to employ and pay the driver of the vehicle.

(4) Application for registration of a new owner may be made before the actual transfer of the vehicle, but the registration of a new owner shall not be effective until the registration book has been surrendered to and reissued by a licensing officer.

(5) Subsections (1), (2) and (4) shall not apply to any change of possession of a vehicle which occurs by reason of the vehicle being lawfully seized under a hire purchase agreement, but in such event the following provisions shall apply-

- (a) the person from whose possession the vehicle was seized shall, within 14 days of the seizure, deliver the registration book to the person who has seized the vehicle, and inform the Director in writing of the change of possession; and
- (b) the person seizing the vehicle shall, within 14 days of receiving the registration book, apply to the Director to be registered as the new owner, and on payment of the



prescribed fee, the Director shall so register him.

(6) On registering a new owner, the Director shall make any necessary alterations to the registration book, and shall deliver it, or if he thinks fit a replacement of such registration book, to the new owner.

#### **10. Registration of vehicles imported into Botswana**

Notwithstanding any other provision of this Act, where a motor vehicle or trailer has been imported into Botswana, a licensing officer shall not register the vehicle until the owner thereof satisfies him-

- (a) that the vehicle has been lawfully exported from its country of origin or the country in which it was last registered; and
- (b) that the vehicle has been lawfully imported into Botswana, and by producing documentary evidence, in the form of a customs clearance certificate issued by the Department of Customs and Excise, that the vehicle has been cleared from customs control.

#### **11. Vehicles to carry identification plates**

A motor vehicle or trailer registered under this Act shall not be used on a road unless there is fixed onto the vehicle in the prescribed manner, the prescribed number of identification plates of the prescribed design and colour on which is inscribed the registration number of the vehicle.

#### **12. Production of registration books**

(1) The owner of a motor vehicle or trailer shall, when requested by a police officer or an authorized officer, produce for inspection, either immediately to such officer or within 10 days of such request being made, at a police station nominated by such owner at the time of such request being made, the registration book issued in respect of such vehicle.

(2) Where-

- (a) a motor vehicle or trailer does not bear any special identification number or mark; or
- (b) the manufacturer's serial number or similar identification number or mark has been obliterated or defaced,

the Director may cause a special identification number or mark to be cut, impressed, embossed on or attached permanently to such vehicle, which shall thereafter be deemed sufficient identification for the purpose of the registration of such vehicle.

(3) In the circumstances referred to in subsection (2)(b), the Director shall cause a full description of such vehicle and the name and address of the applicant applying for registration to be furnished to the nearest police station.

(4) No person shall, without the written permission of the Director, alter, obliterate, deface, or cause the alteration, obliteration or defacement of any identification number or mark used for the purpose of registration in accordance with this Act.

#### **13. Cancellation of registration in certain cases**

(1) Where the Director has reason to believe that a vehicle registered under this Part has been destroyed, broken up, or has left Botswana permanently, he may give notice, either personally or by post, to the registered owner thereof that he intends to cancel the registration of the vehicle, and if before the elapse of one month from the date of service of such notice the registered owner fails to satisfy him that such vehicle has not been destroyed, broken up, or has not left Botswana permanently, the Director shall cancel the registration thereof forthwith.

(2) When the Director cancels the registration of a vehicle under this section, the registered owner of the vehicle shall within 10 days thereafter hand or send the registration book in respect thereof to the Director for cancellation.

#### **14. Offences and penalties**

Any person who contravenes or fails to comply with any of the provisions of this Part or who fails to comply with a requirement lawfully made of him by a police officer, authorized officer, licensing officer or the Director under this Part, shall be guilty of an offence and liable, for

a first offence, to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both, and for each subsequent offence to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both.

#### **15. Exemptions**

The Minister may, by order published in the *Gazette*, exempt any vehicle or any class or description of vehicle from the provisions of this Part.

### **PART III**

#### ***Motor Vehicle Licences (ss 16-22)***

#### **16. Motor vehicles to be licensed**

(1) No person shall own or possess a motor vehicle or trailer, or use it on a road, unless such vehicle is licensed under and in accordance with this Part:

Provided that this section shall not apply in the case of a motor vehicle or trailer-

- (i) lawfully used under the authority of and in accordance with the conditions of a motor dealer's licence;
- (ii) lawfully in Botswana in accordance with regulations made by the Minister under section 130 of this Act;
- (iii) which is owned by and in the possession of a motor dealer for the purpose of sale;
- (iv) which is being driven to or from any place specified by a licensing officer for inspection or testing, or while it is being tested by a motor vehicle examiner; or
- (v) exempted under subsection (2) or any other provision of this Act.

(2) Where the owner or person in possession of a motor vehicle or trailer gives written notice to the Director that for a stated period he does not intend that it shall be used on a road, and it is not at any time used on the road during such period, or where he satisfies the Director that for a stated period such vehicle was not used on a road, it shall not be necessary for such vehicle to be licensed under this Part during the stated period.

#### **17. Application for motor vehicle licence**

Applications for motor vehicle licences shall be made to a licensing officer in the prescribed form accompanied by the prescribed fee and the vehicle registration book.

#### **18. Conditions for the issue of motor vehicle licences**

(1) A licensing officer shall not issue or renew a motor vehicle licence unless he is satisfied that-

- (a) the vehicle is duly registered;
- (b) the particulars in the registration book are correct;
- (c) the vehicle is duly and validly insured in accordance with any written law relating to vehicle insurance;
- (d) any licence issued in respect of such vehicle has not been cancelled or revoked.

(2) Before issuing or renewing a motor vehicle licence in respect of any vehicle of a class or description prescribed for the purposes of this subsection, a licensing officer shall require the applicant to produce a certificate of roadworthiness showing that the vehicle has been examined by a motor vehicle examiner during the three months immediately preceding the commencement of the licence and that the vehicle complies with the provisions of this Act:

Provided that a certificate issued under section 108(2)(g) and dated not earlier than three months before the commencement of the licence shall be deemed to be a certificate of roadworthiness for the purposes of this section.

(3) Where under this section the owner of any motor vehicle is required to have it examined by a motor vehicle examiner, he shall make application therefor in the prescribed form, paying the prescribed fee, and thereupon a motor vehicle examiner shall examine the vehicle and shall issue a certificate in the prescribed form certifying that the vehicle is roadworthy or is not roadworthy.

(4) A certificate certifying that a vehicle is not roadworthy shall state the reasons why the motor vehicle examiner considers the vehicle not to be roadworthy.

**19. Motor vehicle licences** Motor vehicle licences shall be in the prescribed form, and may be issued for such period and upon payment of such fees as may be prescribed:

Provided that, where a period is prescribed, a licence issued before the period is prescribed shall not be invalid solely because the period for which it was issued is different from that prescribed.

**20. Licence to be carried on vehicle**

A motor vehicle or trailer which is required to be licensed under this Part shall not be used on a road unless the motor vehicle licence or such part thereof as may be prescribed, which shall be legible and not defaced or mutilated, is carried on the vehicle in the prescribed manner.

**21. Duplicate motor vehicle licences**

Where a motor vehicle licence is lost, defaced, mutilated or rendered illegible, the Director shall, on being satisfied that the licence has been so lost, defaced, mutilated or rendered illegible, and that the person applying on the prescribed form and paying the prescribed fee is entitled to the issue of such licence, issue or cause to be issued a duplicate of the licence:

Provided that where a motor vehicle licence which has been lost is subsequently found the duplicate shall be returned to the Director for cancellation.

**22. New motor vehicle licence required in certain circumstances**

(1) The holder of a motor vehicle licence shall apply for a new motor vehicle licence where-

- (a) he desires to use the vehicle for any purpose not authorized by the licence; or
- (b) the vehicle is so altered that a higher duty or duty of a different class is required.

(2) A new motor vehicle licence shall not be issued under this section until the old licence has been surrendered for cancellation and the prescribed fee paid.

**PART IV**

***Motor Dealers' Licences (ss 23-27)***

**23. Motor dealer's licence**

(1) The Director may issue to a motor dealer, upon application in the prescribed form and upon payment of the prescribed fees, such number of motor dealer's licences as the applicant may require, and with each such licence shall issue two identification plates in the prescribed form.

(2) Subject to sections 24, 25, 26, and 27, and to any other conditions which may from time to time be prescribed, the holder of a motor dealer's licence shall use the said licence only in respect of vehicles in his possession in the course of his business as a motor dealer, and shall not use more than one such vehicle under the authority of one licence at any one time.

**24. Use of motor dealer's licence**

- (1) A vehicle shall not be used on a road under the authority of a motor dealer's licence-
- (a) unless such vehicle carries identification plates issued under section 23(1), displayed in the prescribed manner;
  - (b) to convey passengers or goods for hire or reward;
  - (c) to carry or convey any goods whatsoever except such load as may be necessary for the purpose of testing the motor vehicle, and no such load, and no part thereof, shall be removed from the motor vehicle at any time between the departure from and the return to the loading place of the motor vehicle, except in the case of an accident; or
  - (d) except with the permission in writing of the Director, for any purpose other than-
    - (i) for proceeding to or returning from any inspection, examination or test as provided for by this Act;
    - (ii) for proceeding from the premises of a motor dealer to a railway station for entraining, or from a train to such premises;
    - (iii) for test or trial during or after completion, construction, assembly or repair;

- (iv) for test or trial by or on behalf of an intending purchaser, or for proceeding to or from the place where the purchaser intends to keep it;
- (v) for proceeding to or from a public weighbridge for the purpose of its weight being ascertained or to or from a place for registration;
- (vi) for exportation outside Botswana;
- (vii) for importation into Botswana;
- (viii) for proceeding from the premises of a motor dealer to the premises of a purchaser or of another motor dealer;
- (ix) for towing a motor vehicle which while being driven upon a road has become unable to proceed under its own power from the place where it has broken down to a place for repair or storage;
- (x) for proceeding to or returning from a workshop in which a body is to be or has been fitted to the motor vehicle or where the motor vehicle is to be or has been painted or repaired; or
- (xi) for proceeding to or returning from an exhibition of motor vehicles.

(2) In any proceedings under this section, the burden of proving the fact of an accident for the purposes of subsection (1)(c) shall lie on the person charged.

(3) A motor vehicle shall not be used on any road under the authority of a motor dealer's licence unless the holder of the licence, or a person duly authorized by him, accompanies such vehicle.

(4) Not more than two persons, in addition to the driver, shall be carried within or upon any such vehicle and such persons shall be limited to a prospective purchaser and his agent or a member of his family or, in the case of a vehicle proceeding to or from an accident, two mechanics.

(5) Upon the issue of a motor dealer's licence, the Director shall also supply to the person to whom such licence is issued a book in a form approved by the Director, in which the holder of such licence shall on each occasion and before such licence is used complete in duplicate the entries for which provision is therein made.

(6) One copy of such entries shall remain in the book and the other copy shall be carried with the vehicle during the whole of the journey to which such entries relate, and shall be produced at any time during such journey by the driver for inspection upon demand made by any police officer, authorized officer, licensing officer or the Director.

(7) Every such book shall be produced at all reasonable times for inspection by a police officer, authorized officer, licensing officer or the Director, and shall be kept available for inspection at the place specified in the declaration made on application for the motor dealer's licence as the place at which the book will be kept.

(8) Any person who defaces or mutilates any such book, or makes any entry therein which is to his knowledge false or misleading, or alters or obliterates any entry made therein, or except as provided by this Act makes any entry therein or addition thereto, or after its removal from such book makes, alters or obliterates any entry in any copy to be carried on the vehicle, shall be guilty of an offence and liable to the penalties provided in section 29.

## **25. Duration of motor dealer's licence**

(1) A motor dealer's licence shall continue in force until the 31st December next following the date of issue.

(2) Every motor dealer's licence shall cease to be valid if the motor dealer ceases to carry on business as a motor dealer in the district for which it is issued.

(3) When a motor dealer's licence expires or is cancelled or otherwise ceases to be valid under this Act, the holder of the licence shall deliver to the Director the identification plates which were issued to such holder with such licence:

Provided that upon the expiry of the licence the holder may retain the identification plates issued with such licence if he applies for and is issued with a new licence in respect of

the same identification plates and such new licence would during the period of its validity authorize the use of such identification plates in the same manner as the expired licence.

#### **26. Cancellation of motor dealer's licence**

(1) The Director may at any time cancel a motor dealer's licence for a breach of any of the provisions of this Act which relate to motor dealer's licences.

(2) Any person holding a motor dealer's licence who is aggrieved by the decision of the Director under this section may, within one month from the date of the service on him of notice of cancellation, appeal to a magistrate's court presided over by a Magistrate Grade I or over.

#### **27. Motor dealer's licence not to be transferred without authority**

A motor dealer's licence shall not be used for any purpose other than a purpose provided for in this Act, and shall not be transferred or assigned to any other person without the written consent of the Director.

### **PART V**

#### ***Recovery of Fees and Penalties (ss 28-29)***

#### **28. Recovery of licence fees by civil process**

Where under Part III or Part IV a licence is required and has not been obtained, a sum equal to the prescribed fee payable in respect of such licence shall be due and owing to the State by the person failing to obtain the licence, and shall be a civil debt recoverable summarily.

#### **29. Penalties**

(1) Any person who contravenes any provision of Part III or Part IV shall be guilty of an offence and liable for a first offence to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both, and for each subsequent offence to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both.

(2) If any person is convicted of an offence under this Act in a case where a licence fee under Part III or Part IV is payable and has not been paid, the court may, whether or not any other penalty is imposed, impose a fine (which shall be disposed of in the same manner as the fee payable on the licence) of an amount equivalent to the fee unpaid, and the payment of such fine shall operate in satisfaction of any civil debt due under section 28.

### **PART VI**

#### ***Driving Licences (ss 30-43)***

**30. Drivers to be licensed** (1) No person shall drive a motor vehicle unless he is the holder of a valid driving licence in respect of that class of vehicle unless otherwise provided by this Act or by any regulations thereunder.

(2) No person shall be entitled to have more than one driving licence issued under this Act.

(3) The driver shall always carry with him the driving licence while driving and must produce it on demand to a police officer for inspection.

(4) No person who owns or is in charge of a motor vehicle of any class shall cause or permit any person to drive such motor vehicle unless such person is the holder of a valid driving licence for that class of vehicle.

(5) Driving licences shall be issued by a licensing officer and shall, unless previously revoked, suspended or cancelled in accordance with the provisions of this Act, remain in force for the lifetime of the holder.

(6) Notwithstanding any other provision of this Act, a person who, immediately before the commencement of this Act, holds a valid driving licence, other than a provisional driving licence, in respect of any class or classes of vehicle, shall not be required to obtain a driving licence for the same class or classes of vehicles under this Act for a period of two years from the date of commencement of this Act, and the old driving licence shall be deemed to be a driving licence issued under this Act for the same class or classes of vehicles:

Provided that this section shall be without prejudice to any provision of this Act relating to the revocation, suspension or cancellation of licences.



(7) Any person who contravenes this section shall be guilty of an offence.

### **31. Conditions for granting of driving licence**

(1) A licensing officer shall not grant an applicant a driving licence in respect of any class of motor vehicle or validate a driving licence in respect of any other class of motor vehicle unless the applicant-

- (a) produces to the licensing officer a certificate of competency showing that he has passed a test of competence to drive that class or other class of motor vehicle conducted under section 39 or is the holder of a full valid driving licence for that class or other class of motor vehicle granted by a competent authority in Botswana or any other prescribed country;
- (b) makes a declaration in the prescribed form-
  - (i) as to whether or not he is suffering from any such disease or disability as may be specified in the form, or any other disease or disability which would be likely to cause the driving by him of a motor vehicle, being a vehicle of such class as he would be authorized by the licence to drive, to be a source of danger to the public;
  - (ii) that he is able to read, with glasses if normally worn, a motor vehicle identification plate at a distance of eight metres; and
  - (iii) stating his age at the date of the application.

(2) If it appears to a licensing officer that there is reason to believe that an applicant for a driving licence, or the renewal of a driving licence, or the validation of a driving licence in respect of any other class of vehicle, is suffering from a disease or disability likely to cause the driving by him of a motor vehicle, of the class or classes in respect of which the application is made, to be a source of danger to the public, he may refuse to grant such application unless the applicant-

- (a) produces a certificate from a medical practitioner, stating that in the opinion of such medical practitioner the applicant is fit to drive the class or classes of motor vehicle in question; and
- (b) undergoes and passes a driving test.

(3) Any person who is aggrieved by the refusal of the Director or a licensing officer to grant or renew a driving licence or to validate a driving licence in respect of any other class of vehicle may, after giving to the Director notice of his intention to do so, appeal to a magistrate's court presided over by a Magistrate Grade I or over, which shall after considering the grounds for such refusal make such order as it thinks fit, and any order so made shall be binding on the Director.

### **32. Provisional driving licence**

(1) Notwithstanding section 31(1), a licensing officer may issue to an applicant for a driving licence, or for the validation of a driving licence in respect of another class of vehicle, a provisional driving licence validated in respect of any class or classes, or that other class, as the case may be, of motor vehicle, in order that the applicant may learn to drive such class or classes of vehicle, or that other class of vehicle.

(2) A holder of a provisional driving licence shall not drive at a speed exceeding 60 kilometres per hour.

(3) Provisional driving licences shall be valid for six months only and may be issued subject to such conditions as may be prescribed.

**33. Age limits for granting of driving licences** A driving licence shall be subject to the following minimum age limit conditions-

- (a) 16 years - class F;
- (b) 18 years - class A1, A, B, EB, H (Special type);
- (c) 21 years - C1, C, EC1, EC,  
PrDP "P" Call-cab,  
PrDP "P" Taxi,



- PrDP "P" Mini-bus,
- PrDP "P" Midi-bus,
- PrDP "P" Special, and
- PrDP "G" Goods,
- (d) 25 years - Pr DP "P" Train-bus,
- PrDP "P" Double-deck bus,
- PrDP "P" School-bus
- PrDP "P" Bus, and
- PrDP "H" Hazardous Goods.

#### **34. Form of application**

Applications for driving licences shall be made to a licensing officer in the prescribed form, accompanied by the prescribed fee, and the particulars required in such form shall be signed by the applicant.

#### **35. Driving licences to members of security forces**

Notwithstanding the provisions of this Part, the Minister may, in regulations made under section 130, prescribe special terms and conditions for the issue of driving licences to uniformed members of the Botswana Defence Force, the Botswana Police Force or the Prison Service for the purpose of driving service vehicles while on duty, and he may in such regulations order that such licences shall be issued without the payment of any fee.

#### **36. ....37. Form of driving licence**

(1) Driving licences shall be in the prescribed form, and there shall be affixed to each licence a photograph of the licence holder, which shall be impressed with the official stamp of the licensing officer.

(2) The signature of the licence holder shall also be affixed to the licence.

(3) No person shall use a mutilated or defaced driving licence.

(4) A driving licence to be issued to any person who is suffering from any disease or disability as referred to in section 31 shall only be issued with the written permission of the Director and shall be subject to such restrictions or conditions as may be determined by the Director; such restrictions or conditions shall be entered on the licence, which shall not be valid unless such conditions or restrictions are complied with by the holder thereof.

(5) Notwithstanding the provisions of this section the Minister may prescribe different requirements with regard to the form of the driving licence.

#### **38. Duplicate licences**

If a driving licence is lost, defaced or mutilated, the Director shall, upon application being made in the prescribed form and upon payment of the prescribed fee, issue to the holder a duplicate of such driving licence:

Provided that where any driving licence which has been lost is subsequently found the holder shall forthwith return such duplicate to the licensing officer for cancellation.

#### **39. Driving test**

(1) Driving tests for the purposes of this Act shall be conducted by driving test examiners.

(2) Driving tests shall be carried out in the prescribed manner upon payment of the prescribed fee and shall in any case include a test of the applicant's-

- (a) knowledge of the rules of the road;
- (b) knowledge of recognized traffic signs and signals made by drivers of vehicles;
- (c) knowledge of any authorized highway code;
- (d) fitness to drive a motor vehicle of the class for which the licence is required;
- (e) ability to drive a motor vehicle of the class to which the application relates; and
- (f) eyesight.

#### **40. Revocation of driving licences**

(1) The Director may-

- (a) revoke the driving licence of any person who appears, in the opinion of the Director, to be suffering from a disease or disability, whether by reason of age or any other cause, likely to cause the driving by him of a vehicle to be a source of danger to the public; or
- (b) order a fresh driving test in the case of any holder of a driving licence who appears to the Director to be so deficient in driving ability as to be a source of danger to the public, and, if the licence holder fails to pass such test, order that his licence shall be revoked.

(2) Where the Director has revoked a driving licence under subsection (1), the owner of such licence shall deliver his driving licence to the Director, who shall endorse on it the reason for its revocation.

(3) The Director shall restore a driving licence revoked under subsection (1) to the person in question under the following conditions-

- (a) in the case of a licence revoked under subsection (1)(a), if such person satisfies the Director, by means of a certificate from a medical practitioner, that he is suffering from no disease or disability likely to cause the driving by him of a vehicle, of the class or classes in respect of which his licence was issued, to be a source of danger to the public; and
- (b) in the case of a licence revoked under subsection (1)(b), if he passes the prescribed test for the class or classes of motor vehicle in respect of which his licence was originally granted.

(4) Any person who is aggrieved by the revocation of a licence under this section may, after giving to the Director notice of his intention to do so, appeal to a magistrate's court presided over by a Magistrate Grade I or over, which shall, after considering the grounds for such revocation, make such order as it thinks fit, and any order so made shall be binding on the Director.

#### **41. Driving instructors' certificates**

(1) No person shall, for reward, instruct or supervise any other person in the driving of a motor vehicle on a road unless he holds a certificate (for the purposes of this Act referred to as "a driving instructor's certificate") issued to him by the Director.

(2) A person desiring to obtain a driving instructor's certificate shall apply to the Director on the prescribed form which shall be accompanied by two passport-type photographs of the applicant's head and shoulders from which he may be readily identified, each copy being approximately 5 cm by 4 cm in size and shall pay the prescribed fee.

(3) The Director shall require an applicant for a driving instructor's certificate to submit himself to-

- (a) an examination and a test by a competent person nominated by the Director in order to determine the competence of such applicant to act as an instructor of learner-drivers; and
- (b) a medical examination by a medical practitioner nominated by the Director in order to determine the physical and mental fitness of such applicant to act as an instructor of learner-drivers.

(4) The applicant shall bear the cost of any medical examination carried out under subsection (3)(b) and shall pay the prescribed fee for an examination for a driving instructor's certificate.

(5) The Director shall, if satisfied that an applicant referred to in subsection (3) is competent and is a fit and proper person to act as an instructor of learner-drivers, is not suffering from any physical or mental defect so to act, and complies or has complied with such conditions as may be prescribed for the purposes of this subsection, issue to such applicant a driving instructor's certificate in the prescribed form which shall have firmly affixed to it at the time it is issued one of the photographs submitted with the application for the certificate.

(6) A driving instructor's certificate shall be valid for one year from the date of its issue.

(7) The holder of a driving instructor's certificate shall, whilst he is, for reward, instructing

or supervising another person in the driving of a motor vehicle on a road, prominently display the certificate within the vehicle or, if the vehicle has no interior, keep it on his person and produce it immediately for examination by the person he is so instructing or supervising or by a police officer in uniform on being required to do so by that person or by such a police officer.

(8) The holder of a driving instructor's certificate or a duplicate thereof issued under this section shall at all times keep the certificate or duplicate thereof in a clean, unmarked, undamaged, undefaced and legible condition and the photograph affixed to it at the time the certificate or duplicate thereof was issued firmly so affixed.

(9) Any person who is aggrieved by the refusal of the Director to issue to him a driving instructor's certificate, may, within 21 days of such refusal, lodge a written notice of appeal with the Minister, and such person shall at the same time serve a copy of such notice on the Director.

(10) The Director shall forthwith after receipt of the copy of a notice referred to in subsection (9), furnish the Minister with his reasons for the refusal to which such notice refers.

(11) For the purpose of deciding an appeal the Minister may-

- (a) appoint any person to examine and test the appellant in order to determine his competence to act as an instructor of learner-drivers;
- (b) appoint a medical practitioner to carry out a medical examination in order to determine the appellant's physical and mental fitness to act as instructor of learner-drivers; and
- (c) require either party to such appeal to furnish such information or evidence as he may deem expedient.

(12) The appellant shall bear the cost of any medical examination carried out under subsection (11)(b).

(13) The Minister shall notify the result of an appeal under this section, in writing, to the parties concerned and, if such appeal is allowed, the Director shall give effect to the decision of the Minister.

(14) Any person desiring to replace a driving instructor's certificate lost, destroyed, damaged or defaced or that has become dirty, marked or illegible shall apply to the Director on the prescribed form for a duplicate thereof, which form shall be accompanied by two passport-type photographs of the applicant's head and shoulders from which he may be readily identified, each photograph being approximately 5 cm by 4 cm in size, and shall pay the prescribed fee.

(15) Where the Director is satisfied that the original certificate has been lost, destroyed, damaged or defaced or has become dirty, marked or illegible, he shall grant every application under subsection (14) and issue to the applicant a duplicate of his original driving instructor's certificate which shall have firmly affixed to it at the time it is issued one of the copies of the photographs submitted with the application for the duplicate.

**42. No penalty prescribed** Any person who contravenes or fails to comply with any of the provisions of this Part for which no specific penalty is prescribed shall be guilty of an offence.

#### **43. ....PART VII**

#### ***Driving and other Offences relating to the Use of Vehicles on Roads (ss 44-74)***

#### **44. Speed limit**

(1) No person shall drive, or being the owner or person in charge of a vehicle, cause or permit any other person to drive, a vehicle on a road at a speed greater than such speed as the Minister may prescribe as the maximum speed for that class of vehicle.

(2) Every vehicle, other than a motor car or a motor cycle, which is subject to a speed limit under subsection (1) of this section shall have painted or affixed to the rear thereof, as close to the rear number plate as possible, and in such a manner as to be conspicuous to any person within eight metres of the rear of the vehicle, a mark in the prescribed form indicating its

maximum speed.

(3) Notwithstanding subsection (1), no person shall drive, or, being the owner or person in charge of a vehicle, cause or permit any other person to drive, any vehicle at a speed exceeding 60 kilometres per hour on any road within the boundaries of any village or township:

Provided that-

- (i) it shall be lawful for a road authority, subject to any written directions which the Minister may give, either generally or in any specific instance, to make bye-laws permitting any class of vehicle, other than a vehicle which is subject to a speed limit of 60 kilometres per hour or less under subsection (1), to be driven on any road at such speed, being in excess of 60 kilometres per hour, as may be specified in such bye-laws;
- (ii) any such road authority shall display and maintain prescribed traffic signs so as plainly to indicate to drivers entering or leaving the boundaries of such villages or townships where the 60 kilometres per hour speed limit restriction begins and ends, and where any other speed limit restriction imposed under this subsection begins and ends.

(4) Notwithstanding subsections (1) and (3), and subject to any written directions which the Minister may give either generally or in any specific instance, a road authority may-

- (a) impose on any road such lower limit of speed as it considers necessary in circumstances when, by reason of repairs, reconstruction or damage to the road or the condition of the road, any lower limit of speed is necessary for the public safety or to prevent damage to the road:

Provided that such lower limit shall be imposed only for such period as is necessary to carry out repairs or reconstruction or until the condition of the road is satisfactory;

- (b) impose on any road or area such lower limit of speed as may be necessary for the safety of the public having regard to the width of streets, nature of traffic or general development of the area.

(5) Where any lower limit imposed under subsection (4) is in force, indication of the maximum speed permitted shall be given by prescribed traffic signs displayed and maintained so as plainly to indicate to drivers entering or leaving such restricted road or area where the lower speed limit begins and ends.

(6) The provisions of this section or of any other Act imposing a speed limit on motor vehicles shall not apply to any vehicle which is fitted with a gong, siren, bell or other warning instrument, when it is being used in cases of emergency for fire brigade, ambulance or police purposes, if the observance of such provisions would be likely to hinder the use of the vehicle for the purpose for which it is being used, and provided that the gong, siren, bell or other instrument is constantly sounded on that occasion:

Provided that this obligation to sound constantly a gong, siren, bell or other warning instrument shall not apply to any vehicle being used for police purposes in order to ascertain whether an offence under this Act is being committed.

#### **45. Penalties in relation to speed**

(1) Any person who contravenes or fails to comply with any of the provisions of section 44 shall be guilty of an offence and shall be sentenced to a fine of not less than P30,00 plus P5,00 for every kilometre per hour exceeded, and not more than P1 000,00 or to imprisonment for a term of not more than five years, or to both.

(2) In any proceedings in respect of an offence under this section, a certificate purporting to be signed by a police officer of or above the rank of Sergeant to the effect that a device manufactured for the purpose of measuring the speeds at which vehicles are driven measured the speed at which any vehicle sufficiently identified in the certificate was being driven on the day and road specified in the certificate as the speed specified in the certificate shall, on being placed before the court by public prosecutor, be admissible in evidence without further proof thereof and the court shall presume that the vehicle so identified was, on that day and road

being driven at that speed, unless the contrary is proved.

**46. Driving, or being in charge, when under influence of drink or drugs**

(1) A person who, when driving or attempting to drive a motor vehicle, is unfit to drive through drink or drugs, shall be guilty of an offence and shall be sentenced to a fine of not less than P1000,00 or more than P5 000,00, or to imprisonment for a term of not less than 12 months or more than five years, or to both.

(2) Without prejudice to subsection (1), a person who, when in charge of a motor vehicle, is unfit to drive through drink or drugs shall be guilty of an offence and shall be sentenced to a fine of not less than P500,00 or more than P2 000,00, or to imprisonment for a term of not less than six months or more than five years, or to both:

Provided that a person shall be deemed for the purposes of this subsection not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive through drink or drugs.

(3) Where a person is convicted of an offence under subsection (2) and has been previously convicted of an offence under subsection (1), he shall be treated for the purposes of subsection (2) as having been previously convicted under that subsection.

(4) For the purposes of this section a person shall be deemed to be unfit to drive if his ability to drive properly is for the time being impaired.

**47. Power to require breath specimen** (1) A police officer may require any person who is driving or is in charge of a motor vehicle to provide, at any place which that officer may specify, a specimen of breath for analysis by means of a breathalyser of a type prescribed by the Minister.

(2) Where the results of the analysis of the specimen of breath provided in accordance with subsection (1) indicate that the level of alcohol in the breath of the person who provided the specimen is in excess of the amount prescribed as being the amount permissible in a specimen of breath for analysis by means of a breathalyser, the police officer shall require that person to provide, at a place specified by that officer, another specimen of breath for analysis, at that place, by the same police officer or any other qualified person.

(3) Where the results of the analysis of the second specimen of breath provided in pursuance of subsection (2) indicate that the level of alcohol in the breath of the person who provided the specimen exceeds the limit prescribed for the level of alcohol in a specimen of breath for analysis by means of a breathalyser, those results shall be deemed to be *prima facie* evidence that that person was unfit to drive through drink or drugs and shall make him liable to a charge for an offence under section 46 or 50(3).

(4) A police officer may cause a person suspected of driving under the influence of drinks or drugs to have that person's blood specimen taken and tested for the level of alcohol in that person's blood, by a qualified person, at any hospital or clinic, if-

- (a) the suspected person is, by reason of injury or other disability, incapable of providing a specimen of breath for analysis by means of a breathalyser; or
- (b) a test with a breathalyser is impracticable due to the lack of serviceable equipment, or due to the distance from the point of arrest to the nearest available breathalyser.

(5) A person who, without reasonable excuse, fails to provide a specimen of breath or blood when required to do so in pursuance of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P500,00 or more than P1 000,00, or to imprisonment for a term of not less than six months or more than 12 months, or to both.

**48. Evidence on charge of unfitness to drive through drink or drugs or causing death thereby**

(1) In any proceedings for an offence under section 46 or for an offence under section 50(3) in connection with a motor vehicle, the court shall, subject to subsections (2), (7) and (9), have regard to any evidence which may be given of the proportion or quantity of alcohol or of



any drug which was contained in the blood or breath of the accused, as the case may be, as ascertained by analysis of a specimen of blood or breath taken from him by a qualified person, at any material time:

Provided the specimen is not taken more than three hours following the offence.

(2) Where, in any proceedings for an offence under section 46 or for an offence under section 50(3) in connection with a motor vehicle, it is proved that the accused refused to consent to the taking of a specimen of blood or a specimen of breath for analysis by a qualified person, his refusal shall, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution or as rebutting any evidence given on behalf of the defence.

(3) Notwithstanding any law to the contrary, a qualified person may, on being requested to do so by a police officer, take a specimen of blood from any person without that person's consent if, at the time the specimen is taken, that person is unable by reason of his physical condition to give or to refuse his consent to the taking of the specimen and if the qualified person then believes on reasonable grounds-

- (a) that the person is detained in the lawful custody of a police officer in respect of an offence under section 46 or of an offence under section 50(3) in connection with a motor vehicle;
- (b) that the person has recently driven or attempted to drive or been in charge of a motor vehicle and that his physical condition is due, either wholly or in part, to the influence of drink or of any drug; or
- (c) that the person's physical condition is due, either wholly or in part, to the involvement in an accident of a motor vehicle which, at the time of the accident, was being driven by that person,

but in taking the specimen no other means nor any greater degree of force shall be used than would, in the particular circumstances, be lawful if that person had given his consent.

(4) Where a specimen of blood taken under subsection (3) is one which, in the opinion of the qualified person, it is not practicable to divide, he may, immediately after taking that specimen, take a second specimen of blood from the same person without that person's consent and without being requested to do so by a police officer but otherwise in accordance with that subsection; but no further specimen shall be taken.

(5) For the purposes of any proceedings for an offence under section 46 or for an offence under section 50(3) in connection with a motor vehicle, a certificate purporting to be signed by a qualified person, and certifying the proportions of alcohol or of any drug found in a specimen of blood or breath as the case may be, shall be evidence without any need for the giving of any oral evidence, on the matters so certified, by the person who signed the certificate:

Provided that the accused has, not less than seven days before the hearing or trial, been served with a copy of the certificate.

(6) Where the accused, at the time a specimen of blood was taken from him with his consent, asks to be supplied with such a specimen, evidence of the proportion of alcohol or of any drug found in the specimen shall not be admissible on behalf of the prosecution unless-

- (a) the specimen is either one of two taken on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken; and
- (b) the other specimen or part was supplied to the accused.

(7) A police officer requesting any person to consent to the taking of a specimen of blood for analysis shall offer to supply to him, in a suitable container, part of the specimen or, in the case of a specimen which it is not practicable to divide, another specimen which he may consent to have taken.

(8) Where the accused from whom a specimen of blood has been taken without his consent under subsection (3) asked, at the time the offer was made to him under subsection (9), to be supplied with such a specimen, evidence of the proportion of alcohol or of any drug found



in the specimen shall not be admissible in evidence on behalf of the prosecution unless-

- (a) the specimen is either one of two taken on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken; and
- (b) the other specimen or part was supplied to the accused.

(9) Where a specimen of blood has been taken from a person without his consent under subsection (3), a police officer shall, as soon as it is reasonably practicable to do so, offer to supply to him, in a suitable container, part of the specimen or, where a second specimen has been taken under subsection (4), that specimen.

(10) The Minister may prescribe a limit to the amount of alcohol permissible in a specimen of blood or breath taken from an accused under this Act and where the Minister has prescribed such a limit and the results of analysis show that the amount of alcohol found in any specimen of blood or breath taken from an accused exceeds the permitted amount, the accused shall be deemed at the relevant time to have been unfit to drive through drink or drugs in any proceedings for an offence by him under section 46 or for an offence under section 50(3) in connection with a motor vehicle.

#### **49. Reckless and dangerous driving generally**

(1) If a person drives a motor vehicle recklessly or at a speed or in a manner which is dangerous to other persons, having regard to all the circumstances of the case, he shall be guilty of an offence and shall be sentenced to a fine of not less than P500,00 or more than P5 000,00, or to imprisonment for a term of not less than six months or more than five years, or to both.

(2) Notwithstanding the provisions of subsection (1), any person who, being the driver of a public service vehicle, drives that vehicle recklessly or at a speed or in a manner which is dangerous to other persons, having regard to all the circumstances of the case, shall be guilty of an offence and shall be sentenced to a fine of not less than P1000,00 or more than P10 000,00, or to imprisonment for a term of not less than six months or more than eight years, or to both.

(3) Where a person is convicted of aiding, abetting, counselling, procuring or inciting the commission of an offence under this section, and it is proved that he was present in the vehicle at the time, the offence of which he is convicted shall, for the purpose of the provisions of this Act relating to disqualification from driving or from holding or obtaining driving licences, be deemed to be an offence in connection with the driving of a motor vehicle.

**50. Causing death by reckless driving, etc.** (1) Any person who causes the death of another person by the driving of a motor vehicle recklessly or in a manner which is dangerous to other persons having regard to all the circumstances of the case shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000,00 or more than P10 000,00, or to imprisonment for a term of not less than five years or more than 10 years, or to both.

(2) Any person who causes the death of another person by the driving or using on a road of a vehicle which is in such condition as to constitute a danger to the public shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000,00 or more than P10 000,00, or to imprisonment for a term of not less than two years or more than 10 years, or to both.

(3) Any person who causes the death of another person by the driving of a vehicle whilst he is unfit to drive through drink or drugs shall be guilty of an offence and shall be sentenced to a fine of not less than P5 000,00 or more than P10 000,00, or to imprisonment for a term of not less than five years or more than 10 years, or to both.

(4) Any person who causes the death of another person by leaving any vehicle on a road in such a position or manner, or in such a condition as to constitute a danger to the public having regard to all the circumstances of the case including the nature, condition and use of the road, and the amount of traffic and number of animals which are actually, or which are reasonably expected to be on the road at the time, shall be guilty of an offence and shall be sentenced to a fine of not less than P1000,00 or more than P2 000,00, or to imprisonment for a term of not less than six months or less than one year, or to both.

## **51. Careless and inconsiderate driving**

(1) If a person drives a motor vehicle without due care and attention, or without reasonable consideration for other persons, he shall be guilty of an offence and shall be sentenced to a fine of not less than P100,00 or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both.

(2) Notwithstanding the provisions of subsection (1), any person who, being the driver of a public service vehicle, drives that vehicle without due care and attention or without reasonable consideration for other persons, shall be guilty of an offence and shall be sentenced to a fine of not less than P1 000,00 or more than P5 000,00, or to imprisonment for a term of not less than 12 months or more than five years, or to both.

(3) Where a person is convicted of an offence under subsection (1) and he has been previously convicted of an offence under section 49 or section 50 he shall be treated for the purposes of subsection (1) as having been previously convicted under that subsection.

## **52. Alternative offences**

(1) Upon the trial of a person for manslaughter contrary to section 200 of the Penal Code in connection with the driving of a motor vehicle, the court may, if it considers that offence not proved, but is satisfied that he is guilty of an offence under section 49, 50 or section 51, find him guilty of such other offence.

(2) Upon the trial of a person for an offence under section 46 in connection with the driving of a motor vehicle or under section 50 the court may, if it considers that offence not proved, but is satisfied that he is guilty of an offence under section 49 or section 51, find him guilty of such other offence.

(3) Upon the trial of a person for an offence under section 49 the court may, if it considers that offence not proved, but is satisfied that he is guilty of an offence under section 51, find him guilty of that offence.

**53. Mandatory disqualification** (1) Where a person is convicted of manslaughter contrary to section 200 of the Penal Code in connection with the driving of a motor vehicle, or of an offence under section 50 of this Act, the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than three years or more than five years.

(2) Where a person is convicted of an offence under section 46(1), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than two years or more than five years.

(3) Where a person is convicted of an offence under section 46(2), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than one year or more than three years.

(4) Where a person is convicted of an offence under section 49(1), the court convicting him shall order that he be disqualified from driving or from holding or obtaining a driving licence for not less than one year or more than two years.

(5) Where a person is convicted of an offence under section 45, 46, 49, 50, or 51 committed within a period of one year from a previous conviction for the same offence, the court convicting him shall disqualify him from driving or from holding or obtaining a driving licence for three months.

## **54. Power of arrest**

(1) Without prejudice to the powers of arrest conferred on a police officer under any other written law, a police officer may arrest without warrant the driver of any motor vehicle whom he suspects of having committed an offence under section 46, 49 or 50.

(2) A police officer may require any person whom he suspects of having committed an offence under this Act to give his name and address and if such person fails on demand to give his name and address the police officer may arrest him without a warrant, and any such person who fails on demand to give his name and address when it is so demanded from him, or who

gives a false name or false address, shall be guilty of an offence and liable to a fine not exceeding P25.

#### **55. Right to demand name and address**

If any person has reasonable grounds for believing that the driver or person in charge of any motor vehicle has committed an offence under section 46, 49, 50 or 51, he may, within a reasonable time after the occurrence of the event which gave rise to such belief and in the absence of a police officer, require any person who is or was in any way connected with such motor vehicle at the time of such occurrence, to furnish him with his name and address, and if such last-mentioned person fails to comply with such requirement or furnishes a false name or false address he shall be guilty of an offence and liable to a fine not exceeding P25.

#### **56. Proper fuel to be used in motor vehicles**

(1) No fuel shall be used in any motor vehicle except that specified in the vehicle licence in respect of such vehicle or, in the case of a motor vehicle the motor unit of which is a compression ignition engine, light amber mineral fuel oil:

Provided that the Minister may, subject to such conditions as he may see fit to impose, exempt any specified vehicle, the motor unit of which is a compression ignition engine, from the provisions of this subsection and may specify the fuel which shall be used in such motor vehicle.

(2) If the owner or the driver of any motor vehicle uses any fuel contrary to subsection (1) or if any person sells any fuel having reason to believe that it will be so used, the owner and the driver and such other person shall each be guilty of an offence and liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding three years, or to both, and in addition such vehicle shall be liable to be forfeited.

#### **57. Signals and signs to be obeyed**

(1) The driver of a vehicle shall at all times-

- (a) obey any directions given, whether verbally or by signal, by a police officer in uniform, in the execution of his duty;
- (b) conform to the indications given by any duly prescribed traffic sign or signal; and
- (c) when any person in charge of any cattle, on or about to cross any road, raises his hand or in any manner gives a signal to stop, forthwith stop his vehicle and keep it stationary for as long as it is reasonably necessary for the safety of road users.

(2) Notwithstanding subsection (1) instructions conveyed by traffic signs consisting of lights shall take precedence over those conveyed by other means, and the directions given by a police officer in uniform shall take precedence over the instructions conveyed by any traffic sign and over any rules of the road.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be sentenced to a fine of not less than P100,00 or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both.

#### **58. Offences relating to parking bays and areas**

(1) Any person who, being the driver of a vehicle, in any parking bay or parking area-

- (a) leaves the vehicle for a period in excess of the time prescribed by any traffic sign relating to that bay or area;
  - (b) contravenes or fails to comply with any traffic sign relating to that bay or area as to the manner in which vehicles shall stand in or be driven into or out of, the bay or area; or
  - (c) leaves the vehicle in contravention of any traffic sign relating to that bay or area,
- shall be guilty of an offence and liable to a fine not exceeding P20.

(2) In relation to an offence under subsection (1), the reference in that subsection to the driver of a vehicle shall be construed as a reference to the person driving the vehicle at the time it was left in the parking bay or parking area.

(3) Where the driver of a vehicle is alleged to be guilty of an offence under subsection

(1)-

- (a) the owner of the vehicle shall give such information as to the identity of the driver as he

- may be required by a police officer to give; and
- (b) any other person shall, if required as aforesaid, give any information which it is in his power to give and which may lead to the identification of the driver.
- (4) A person who fails to comply with-
- (a) subsection (3)(a) shall be guilty of an offence unless he shows to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained who the driver of the vehicle was; and
  - (b) subsection (3)(b) shall be guilty of an offence,
- and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding one month, or to both.

(5) In this section-

"parking area" means an area designated as such by a road authority where motor vehicles, or vehicles of any class or description, may wait;

"parking bay" means a space in a parking area where a vehicle may wait.

#### **59. Vehicles not to obstruct roads**

(1) A vehicle shall not be allowed to remain in any position on any road so as to obstruct or to be likely to obstruct or cause inconvenience or danger to other traffic using the road, and except where the contrary is expressly provided in this Act, every vehicle on a road, when not in motion, shall be drawn up as close to the side of the road as possible:

Provided that, except in order to avoid an accident or in compliance with a traffic sign or with a direction given by a police officer or for any cause beyond the control of the driver, a vehicle shall not be drawn up on the right hand side of a road facing on-coming traffic.

(2) The driver of any vehicle shall, in case of a breakdown, remove such vehicle from the carriageway as soon as possible, and until so removed the vehicle shall be placed as close to the side of the carriageway as possible.

(3) If the vehicle remains on the carriageway between sunset and sunrise, its position shall be clearly indicated by a light or lights visible to drivers of vehicles approaching from either direction and by such other means as may be prescribed.

(4) Any person who leaves any vehicle on a road or carriageway in such a position or manner or in such a condition as to cause or be likely to cause any danger to any person shall be guilty of an offence and liable to a fine not exceeding P600 or to imprisonment for a term not exceeding 18 months, or to both.

#### **60. Racing, pacemaking and trial of speed**

(1) No person shall, without the written consent of the road authority and of the Commissioner of Police, promote or take part in any race, road rally or speed trial between vehicles on a road, and in giving their consent the road authority and the Commissioner of Police may impose such conditions as they think fit.

(2) A person convicted of an offence under this section shall, unless the court for special reasons thinks fit to otherwise order, and without prejudice to the power of the court to order a longer period of disqualification, be disqualified from driving and from holding or obtaining a driving licence for a period of 12 months.

#### **61. Condition of vehicles**

(1) A vehicle shall not be used on a road unless such vehicle and all parts and equipment thereof, including lights and tyres, comply with the requirements of this Act, and such parts and equipment shall at all times be maintained in such a condition that the driving of the vehicle is not likely to be a danger to other users of the road or to persons travelling on the vehicle.

(2) A motor vehicle the weight or dimensions of which laden or unladen exceeds the maximum weight or dimensions provided for such vehicles by regulations made under this Act shall not be used on a road.

(3) Any person who contravenes the provisions of this section shall be guilty of an

offence and shall be sentenced to a fine of not less than P50,00 or more than P500,00, or to imprisonment for a term of not less than one month or more than six months, or to both.

#### **62. Limitation**

(1) A vehicle shall not be used on a road with a load greater than the load specified by the manufacturer of the chassis of the vehicle or than the load capacity determined by a motor vehicle examiner under this Act.

(2) No vehicle shall be used on a road if it is loaded in such a manner as to make it a danger to other persons using the road or to persons travelling in the vehicle; and should any load or part of a load fall from any vehicle on to a road such fact shall be *prima facie* evidence that the vehicle was loaded in a dangerous manner until the contrary is proved to the satisfaction of the court.

(3) For the purposes of this section, persons travelling in a vehicle shall be deemed to be part of the load.

#### **63. Exemptions**

(1) A road authority may, with the approval of any police officer of or above the rank of Assistant Superintendent, grant a permit subject to such conditions as may be specified therein-

- (a) for the use on a road of a vehicle the weight or dimensions of which exceed the maximum weight or dimensions provided for by regulations made under this Act;
- (b) for the carriage by a vehicle on a road of any specified load which it is unlawful to place on the vehicle under the provisions of any regulations made under this Act.

(2) Every permit granted under this section shall be in writing, and shall be carried on the vehicle in question whenever such vehicle is being used under the authority of such permit.

#### **64. Penalty for improper condition or overloading**

(1) Any person who drives or uses on a road a vehicle in contravention of section 61 or 62 shall be guilty of an offence and liable to a fine not exceeding P600 or to imprisonment for a term not exceeding nine months, or to both.

(2) For the purposes of subsection (1), any person who is shown to the satisfaction of the court to be responsible for the maintenance of the vehicle, and any person who is shown to the satisfaction of the court to have been responsible for the loading of the vehicle, shall be deemed to have used the vehicle on the road.

(3) In any case where a vehicle is twice or more times, in a period of 12 months, the subject of a successful prosecution under section 61 or 62 the court may order the Director to suspend the licence of such vehicle for a period of six months.

(4) The Director shall thereupon suspend the licence of such vehicle for such period, and the owner of the vehicle shall return the licence of the vehicle to the Director, who in no case shall issue another licence in respect of such vehicle until the termination of the period of suspension.

(5) A vehicle licence shall not be returned or a new licence shall not be granted in respect of a vehicle whose licence has been so suspended unless a motor vehicle examiner certifies that the vehicle is fit in all respects for use upon the road.

(6) When a vehicle licence has been suspended under subsection (3), no refund of licence fee shall be made.

#### **65. Obstructing driver of motor vehicle**

(1) No person shall molest, obstruct or interfere with the driver of a motor vehicle while it is being driven.

(2) Passengers shall not be carried in such numbers or in such a position in a motor vehicle as to be likely to interfere with the safe driving of such motor vehicle; and in the event of a contravention of this subsection the driver and the person in charge of the motor vehicle shall be guilty of an offence.

(3) No person driving a motor vehicle shall be in such a position that he cannot control the same or obtain a full view of the road including traffic ahead and in the rear.



## **66. Motor cycles**

(1) No person shall drive a motor cycle on a road unless his feet are, except for exceptional and temporary reasons, resting on foot rests suitable for the purpose and, where the design of such motor cycle makes it possible to do, he is seated astride the saddle of such motor cycle.

(2) No person shall, on a road, carry a passenger on a motor cycle unless such cycle has an engine with a cylinder capacity of not less than 49 cubic centimetres and unless such passenger is seated astride a pillion attached to such cycle and, in such event, foot rests have been provided for such passenger.

(3) Not more than two persons shall ride upon a motor cycle on a road.

(4) No person shall be carried in a side-car attached to a motor cycle on a road.

(5) No person or animal or article shall be carried on a motor cycle on a road in front of the driver thereof:

Provided that an article of a non-bulky nature may be so carried if securely attached to the motor cycle or placed in a suitable carrier fitted thereon for that purpose and carried in such a way as not to obstruct the driver's view or prevent his exercising complete control over such motor cycle.

(6) Persons, other than police officers, driving motor cycles on a road shall drive in single file except in the course of overtaking another motor cycle, and two or more persons driving motor cycles shall not overtake another vehicle at the same time:

Provided that where a road is divided into traffic lanes each such lane shall, for the purposes of this subsection, be regarded as a road.

(7) No person driving a motor cycle on a road shall take hold of any other vehicle in motion.

(8) A person driving a motor cycle on a road shall do so with at least one hand on the handle-bars of such motor cycle.

## **67. Riding in a dangerous position**

(1) Except for the purpose of testing or repairing a motor vehicle, no person shall ride or be carried on the footboard, tailboard, steps, mudguards, canopy, roofing or elsewhere on the outside of any vehicle.

(2) No person shall ride or be carried on any load upon a vehicle if such a proceeding is unsafe.

## **68. Restriction on towing and mounting a vehicle**

(1) No person, otherwise than with lawful authority or reasonable cause, shall take or retain hold of, or get on or off, a motor vehicle or trailer while it is in motion on any road.

(2) No person shall drive or permit any person to drive any vehicle on a road towing another vehicle-

- (a) unless the tow-rope or chain or other connecting appliance is so adjusted that the distance separating the two vehicles does not exceed four metres;
- (b) unless the towed vehicle is securely attached to the towing vehicle and is under proper control;
- (c) unless the means of connection between the two vehicles has been rendered easily discernible to other users of such road:

Provided that this paragraph shall not apply where the towed vehicle is a trailer or where the distance separating the two vehicles does not exceed two metres;

- (d) unless there is a person in control of the steering apparatus of the towed vehicle, where such towed vehicle is a motor vehicle other than a trailer, and such person holds a licence entitling him to drive the class of vehicle which is being towed:

Provided that the provisions of this paragraph shall not apply when a vehicle is so towed that its steering wheel or wheels is or are carried clear of the ground or where the towed vehicle is connected to the towing vehicle by a steering lock tow-bar;



- (e) at a speed in excess of the rate of 30 kilometres per hour in the case of a motor vehicle towing another motor vehicle, other than a trailer, unless the connecting appliance is a tow-bar, in which case the speed shall not exceed 60 kilometres per hour;
- (f) if the towed vehicle is conveying passengers, except where such towed vehicle is a trailer:
  - Provided that-
  - (i) a tractor not designed for or capable of exceeding a speed of 30 kilometres per hour on a reasonably level road, may tow one trailer conveying passengers, otherwise than for hire or reward, where such conveyance is not prohibited in terms of any other provision of this Act; and
  - (ii) this paragraph shall not apply where the towed vehicle is a trailer intended for and licensed for the carriage of passengers;
- (g) if the towed vehicle is a motor vehicle without efficient brakes, unless the connecting appliance is a tow-bar.

#### **69. Causing damage to a vehicle**

No person shall throw any object at a vehicle or at any person in or on such vehicle, nor shall he place any object on any road nor by any means impede the progress of any vehicle whereby injury or damage might be caused to such vehicle or any person.

#### **70. Tampering with a vehicle**

No person shall, without the knowledge or permission of the owner, or without reasonable excuse, get on to a motor vehicle, or attempt to manipulate any of the levers, the starter, brakes or machinery of such a vehicle, or in any way tamper with a vehicle.

#### **71. Taking a vehicle without authority**

(1) If any person, whether employed by the owner or not, takes and drives away or attempts to take and drive away a motor vehicle without the consent of the owner thereof or other lawful authority, he shall be guilty of an offence and liable to a fine not exceeding P300 or to imprisonment for a term not exceeding nine months, or to both:

Provided that if the court is satisfied that the accused acted in the reasonable belief that he had lawful authority, or in the reasonable belief that the owner would, in the circumstances of the case, have given his consent if he had been asked therefor, the accused shall not be liable to be convicted of an offence.

(2) If, in any prosecution for stealing a motor vehicle, the court is of the opinion that the defendant is not guilty of stealing the motor vehicle, but is guilty of an offence under this section, the court may find him guilty of an offence under this section.

(3) In addition to any penalty specified in this section, the court may order that the convicted person shall pay to the owner of the motor vehicle such sum as represents fair compensation for any damage sustained by the owner of the motor vehicle.

#### **72. Unattended motor vehicles**

No person shall, on a road-

- (a) leave unattended any motor vehicle with the engine running; or
- (b) quit any vehicle without having taken due precautions against its moving from its stationary position.

#### **73. Offences in connection with level crossings**

(1) No person shall drive, pull or push, or attempt to drive, pull or push any vehicle, conveyance or animal on to or across a level crossing on a railway line when there is any risk of the vehicle, conveyance or animal being involved in a collision with a locomotive, railcar, carriage, wagon or other vehicle using the railway line.

(2) Every person driving a motor vehicle shall when approaching a level crossing reduce speed to enable the motor vehicle to be brought to a halt if necessary before reaching the level crossing and shall not increase speed until he has crossed the railway line. It shall be his duty to keep a vigilant look-out for any approaching locomotive, railcar, carriage, wagon or other vehicle

using the railway line.

(3) If at any level crossing there is erected an automatic warning device and such device is giving warning of the approach of any locomotive, railcar, carriage, wagon or other vehicle using the railway line, it shall be the duty of the person in charge of any vehicle or animal to stop the vehicle or animal clear of the railway line and not proceed over the level crossing until it is safe to do so.

(4) If at any level crossing there is erected a traffic sign warning traffic to stop, it shall be the duty of the person in charge of any vehicle or animal to stop the vehicle or animal clear of the railway line before crossing it for such time as may be necessary for him to ascertain whether there is any risk of the vehicle or animal being involved in a collision with any locomotive, railcar, carriage, wagon or other vehicle using the railway line.

(5) Any person who acts in contravention of this section, or who crosses or attempts to cross any railway line when it is unsafe to do so, shall be guilty of an offence and liable to a fine not exceeding P100.

#### **74. Offences and penalties**

Any person who contravenes or fails to comply with any of the provisions of this Part for which no other penalty is provided shall be guilty of an offence and liable for a first offence to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both, and for each subsequent offence to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both.

### **PART VIII**

#### ***Regulation of Traffic (ss 75-81)***

#### **75. Rule of the road**

The driver of any vehicle travelling on a road shall, except where road conditions render it impossible-

- (a) keep to the left of the centre of the road whether approached by another vehicle or not;
- (b) when overtaking or passing another vehicle going in the same direction pass on the right side of the said vehicle;
- (c) when meeting a stationary vehicle on his left side of the road or another vehicle on his left side of the road proceeding in the same direction, pass the stationary vehicle or vehicle proceeding in the same direction only if he is able to do so without obstructing the line of passage of any vehicle coming in the opposite direction.

#### **76. Highway Code**

(1) The Minister may prepare a code (in this section referred to as the Highway Code) comprising such directions as appear to him to be proper for the guidance of persons using roads, and may from time to time revise the Highway Code by revoking, varying, amending or adding to the provisions thereof in such manner as he thinks fit.

(2) The Highway Code and any alterations proposed to be made in the provisions thereof shall be laid before the National Assembly and, if a resolution of the National Assembly is passed within 30 days of their being so laid that such Code be revoked or amended in accordance with such resolution, such Code shall be deemed to be revoked or amended accordingly, but without prejudice to anything previously done or suffered by virtue thereof.

(3) A failure on the part of any person to observe any provision of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind, but any such failure may in any proceedings (whether civil or criminal, and including proceedings for an offence under this Act) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings.

#### **77. Police empowered to regulate traffic**

Without prejudice to any powers or duties of the police under this Act or any other written law, the police shall have power-

- (a) to regulate all traffic and to keep order and prevent obstruction on all roads, in parking

- places and other places of public resort;
- (b) to divert traffic temporarily, or to restrict or close and deny public access to any road, parking place or other place of public resort, where any emergency or any assembly or other event appears to render advisable such a course; and
- (c) to temporarily forbid any person to continue to drive or be in charge of a vehicle if it appears to a police officer that such person, by reason of his physical or mental condition, howsoever arising, is incapable for the time being of driving or being in charge of such a vehicle and, in such a case, the police officer shall arrange for the safe disposal or parking of the vehicle as in his opinion may be necessary or desirable in the circumstances.

#### **78. Traffic signs**

(1) Subject to and in conformity with such general or other directions as may be given by the Minister, a road authority may cause or permit traffic signs to be placed on or near a road.

(2) Traffic signs shall be of the prescribed size, colour and type except where the Minister authorizes the erection or retention of a sign of another character.

(3) After the commencement of this Act, no traffic signs shall be placed on or near any road except under and in accordance with subsections (1) and (2):

Provided that-

- (i) nothing in this subsection shall apply to any notice in respect of the use of a bridge; and
- (ii) a road authority or police officer of or above the rank of Inspector may authorize the erection of any traffic sign for any special purpose for a period not exceeding seven days, and such traffic sign shall be deemed to be lawful even though it does not conform to the requirements of this section.

(4) For the purposes of this Act, all traffic signs shall be deemed to have been lawfully erected until the contrary is proved.

(5) A road authority may, by notice in writing, require the owner or occupier of any land on which there is any traffic sign or any object which so closely resembles a traffic sign that it might reasonably be taken to be such a sign, to remove it, and if any person fails to comply with such a notice the road authority may effect the removal and may recover the expense incurred in so doing as a civil debt recoverable summarily from the person so in default:

Provided that this subsection shall not apply in the case of any sign or object so long as its retention is expressly authorized by the road authority.

#### **79. Closure of roads**

(1) A road authority or its authorized representative may, with the approval of the Minister, for the purposes of preventing damage being caused to any road or for the purpose of carrying out any works which it considers necessary or desirable in connection with the maintenance or improvement of any road, close the whole or any part of such road to all vehicles or any particular type of vehicle at any time for such period as it thinks fit.

(2) Where, in the opinion of a police officer of or above the rank of Assistant Superintendent, it is desirable in the interests of public safety, or of maintaining law and order, or for the enforcement of this Act, to block or close any road, such police officer may direct the blockage or closure of such road for such period, not exceeding 48 hours, as he thinks fit.

#### **80. Injury to bridge and roads**

If any injury is caused to a bridge or road as a result of any contravention of this Act, the road authority concerned may make good such injury and recover the cost thereof from the owner of the vehicle responsible for the injury, and the certificate of the road authority of the amount of the cost of making good such injury shall be conclusive evidence of the amount payable by such owner.

#### **81. Power of road authority to instal parking meters**

(1) A road authority may charge fees in respect of the parking of vehicles on a road or

section thereof within its area of jurisdiction and may, for the purpose of collecting any such fees, instal parking meters.

(2) The fees referred to in subsection (1) may differ in respect of different roads or different sections of the same road as the road authority thinks fit.

(3) A parking meter referred to in subsection (1) shall only be installed in conjunction with a demarcated parking place and shall bear thereon a legend indicating the days and hours when the requirements to deposit coins therein shall apply and the value of the coins to be deposited for a specified period of parking.

(4) The period of time for which a vehicle may be lawfully parked in a parking place referred to in subsection (3) shall, unless the contrary is proved, be as measured by the parking meter for such place.

(5) All fees collected by a road authority by means of parking meters under this section shall be used only to defray the costs of and incidental to any scheme, works or undertaking for the improvement or regulation of traffic conditions within its area of jurisdiction, including the cost of installing and maintaining such meters.

(6) The exercise by a road authority of its functions under this section shall not render the road authority subject to any liability in respect of the loss of or damage to any vehicle or the contents or fittings of any such vehicle while such vehicle is in a parking place.

## **PART IX**

### ***Accidents (ss 82-84)***

#### **82. Duty to stop and report**

(1) If a vehicle is involved in or contributes to any accident whereby the death of or injury or damage to any person, property, cattle or other domestic animal is caused, the driver of the vehicle shall stop and, if requested to do so by any person having reasonable grounds for so requiring, give his name and address, the name and address of the owner of the vehicle and of the company with whom the vehicle is insured and the registration number of the vehicle.

(2) Any other person in the vehicle at the time of the accident shall also, if required to do so, give his name and address.

(3) In the case of such an accident, the driver of the vehicle shall report the accident at a police station or to a police officer as soon as it is reasonably practicable to do so and in any event within 48 hours immediately after the accident-

(a) if for any reason he does not, at the scene of the accident, supply the particulars referred to in subsection (1) in accordance with that subsection:

Provided that this paragraph shall not apply in the case of an accident whereby-

- (i) the death of or injury to any domestic animal other than cattle is caused; or
- (ii) the death of or injury or damage to any property or cattle is caused, which property or cattle is, at the time of the accident, owned by and in the possession of the driver of the vehicle;

(b) if the death of or injury to any person is caused by the accident; or

(c) if, as a result of the accident, any vehicle is left in such a position, manner or condition as to obstruct or inconvenience or be likely to obstruct or inconvenience any traffic using a road or to constitute or be likely to constitute a danger to the public.

(4) After reporting the accident at a police station or to a police officer in accordance with this section, the driver of the vehicle shall remain at the scene of the accident or return to the scene of the accident and wait until he has been authorized by a police officer to depart or unless he has to assist the injured or receive attention himself.

(5) Until the driver of the vehicle concerned reports the accident to the police in accordance with this section, he shall not take any intoxicating liquor or drug unless it is prescribed by a medical practitioner or registered nurse.

(6) When stopping as required by this section, the driver of the vehicle concerned in the accident shall take such steps as he is reasonably able to ensure the safety of other traffic at

the scene of the accident.

(7) The owner of a vehicle which is involved in or contributes to an accident shall supply to the police all information necessary to identify the driver of the vehicle at the time of the accident.

### **83. Penalties for not stopping and reporting**

Any person who contravenes or fails to comply with any of the provisions of section 82 shall be guilty of an offence and liable-

- (a) where the accident has resulted in the death of or injury to a person, to a fine not exceeding P1 200 or to imprisonment for a term not exceeding three years, or to both;
- (b) where the accident has resulted in damage to any property or animal, to a fine not exceeding P400 or to imprisonment for a term not exceeding one year, or to both.

### **84. Police empowered to inspect and remove and detain vehicles involved in an accident**

(1) Where an accident arises out of the presence of a motor vehicle on a road, any police officer, or any person duly appointed in writing by a police officer, may inspect any vehicle in connection with which the accident arose, and for that purpose may enter at any reasonable time any premises where the vehicle is, and if any person obstructs such police officer or duly appointed person in the performance of his duty under this subsection he shall be guilty of an offence.

(2) Where an accident arises out of the presence of a motor vehicle on a road, any police officer, or any person duly appointed in writing by a police officer, may, if he considers the presence of such vehicle on a road to be likely to cause an obstruction or to create a danger to other traffic or if he wishes to investigate the roadworthiness of such vehicle, may remove it or cause it to be removed to such place as he may determine and there detain it until collected by the owner or until its roadworthiness is ascertained, as the case may be, and if any person obstructs such police officer or duly appointed person in the performance of his duty under this subsection he shall be guilty of an offence.

(3) Any person who is guilty of an offence under this section shall be liable for a first offence to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both, and for each subsequent offence to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both.

## **PART X**

### ***Powers of Court, Disqualification, etc. (ss 85-92)***

**85. Powers of court** (1) A court may, for any offence for which it is not obliged to impose mandatory disqualification under section 53-

- (a) disqualify such person from driving, and from holding or obtaining a driving licence for such period as it may determine;
- (b) if the person convicted holds a driving licence, suspend such licence until such time as the person passes another driving test under section 39; or
- (c) if the person convicted holds a driving licence, cause particulars of the conviction to be endorsed thereon, and forward a notice of the conviction and endorsement to the Director.

(2) Any disqualification or suspension imposed under subsection (1) may be limited to the driving of a particular class or description of vehicle.

(3) Where a court suspends a driving licence under subsection (1)(b), a licensing officer shall, on application being made and upon payment of the prescribed fee, issue a provisional driving licence to such holder.

### **86. Right of appeal**

An appeal shall lie against any order made by a court under section 85 in the same manner as against a conviction, and the court making the order or the court to which the appeal lies may suspend the operation of the order pending the determination of the appeal.



## **87. Effects of disqualification or suspension**

(1) Where a court disqualifies a person from driving or suspends a licence under any provision of this Act, it shall require and obtain production of any driving licence held by the offender, shall cause particulars of the offence to be endorsed on the licence, and forward it to the Director together with a notice of the conviction and sentence.

(2) Where a driving licence has been suspended the Director shall retain such licence until the holder passes another driving test, when it shall be returned to the holder.

(3) Where a court disqualifies a person from driving for a period in excess of six months, any driving licence held by such person shall be cancelled in respect of the class or classes of vehicles in respect of which the disqualification was made, and, at the end of the period of disqualification, the licensing officer shall treat such person as if he were applying for a driving licence in respect of such class or classes of vehicles for the first time, and shall in no circumstances issue him with a driving licence until he has passed the prescribed driving test.

(4) Any new driving licence issued to such person shall contain any endorsements that were on his previous licence.

(5) Where a court disqualifies a person from driving for a period of six months or less, the Director shall, on application by the holder and subject to the exercise of his powers under section 40 return the licence to the holder on the expiration of the period of disqualification.

(6) Where the suspension or disqualification by the court is limited to a particular class of vehicles, the Director shall, upon receipt of the licence, issue to the licence holder a new licence on which there shall be indicated in the prescribed manner the class or classes of vehicle which the licence holder is thereby authorized to drive.

## **88. Driving whilst disqualified**

Any person who, whilst he is disqualified from driving or from holding or obtaining a driving licence under this Part or any other provisions of this Act-

- (a) drives a motor vehicle on a road; or
- (b) if the disqualification is limited to the driving of a motor vehicle of a particular class or description, drives a motor vehicle of that class or description on a road,

shall be guilty of an offence and liable to a fine not exceeding P600 or to imprisonment for a term not exceeding 18 months, or to both, and the court convicting him shall disqualify him from driving or from holding or obtaining a driving licence for a period of one year consecutive to his current period of disqualification.

## **89. Fraudulent application for driving licence**

(1) Any person who-

- (a) having had an application for a driving licence refused, or having been disqualified from driving or from holding or obtaining a driving licence, applies for and obtains a licence without disclosing the fact of such refusal or disqualification; or
- (b) whilst he is, either under this Part or any other provision of this Act, disqualified from driving or from holding or obtaining a driving licence either generally or in respect of a particular class or description of motor vehicle, applies for and obtains a driving licence, or a driving licence for the particular class or description of motor vehicle, as the case may be,

shall be guilty of an offence and liable to a fine not exceeding P600 or to imprisonment for a term not exceeding 18 months, or to both, and any driving licence so obtained shall be of no effect.

(2) Where the accused is disqualified from driving or from holding or obtaining a driving licence, any period during which he has held such a fraudulently obtained licence shall be added to such period of disqualification.

## **90. Particulars of endorsement to be inserted in new licence**

On the issue of a driving licence to any person, the particulars endorsed on any previous licence held by him shall be inserted in the new licence, unless he has previously become



entitled under section 92 to the issue of a licence free from endorsement.

**91. Applying for licence without disclosing endorsement**

If any person whose driving licence has been ordered to be endorsed, and who has not previously become entitled under section 92 to have a licence issued to him free from endorsement, applies for or obtains a licence without giving particulars of the order, he shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both; and any licence so obtained shall be of no effect.

**92. Issue of new licence free from endorsement**

Where a person in respect of whom an order has been made under this Act requiring the endorsement of any driving licence held by him has, during a continuous period of three years or upwards since the order was made, had no other such order made against him, he shall be entitled, at any time, on application and subject to the payment of the prescribed fee and to the surrender of any existing licence, to have issued to him a new licence free from endorsement:

Provided that in reckoning the said period of three years any period during which the person was by virtue of the order disqualified from driving and from holding or obtaining a driving licence or during which his driving licence was suspended shall be excluded.

**PART XI**

***Offences by Drivers of Vehicles other than Motor Vehicles (ss 93-96)***

**93. Driving under the influence of drink** Any person who when driving or attempting to drive, or when in charge of a vehicle, other than a motor vehicle, on a road or in a public place, is under the influence of drink or drugs to such an extent as to be incapable of having proper control of the vehicle shall be guilty of an offence and shall be sentenced to a fine of not less than P50,00, or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both.

**94. Reckless driving** Any person who drives any vehicle, other than a motor vehicle, on a road or in a public place, recklessly or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road and the amount of traffic which is actually, or which might reasonably be expected to be on the road, at the time, shall be guilty of an offence and shall be sentenced to a fine of not less than P100,00 or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both.

**95. Careless driving** Any person who, on a road or in a public place, drives a vehicle other than a motor vehicle, without due care or attention, shall be guilty of an offence and shall be sentenced to a fine of not less than P50,00 or more than P500,00, or to imprisonment for a term of not less than one month or more than six months, or to both.

**96. Restrictions on riding cycles**

(1) No person shall ride a cycle on a road unless he is seated astride the saddle of such cycle.

(2) Persons riding cycles on a road shall ride in single file except in the course of overtaking another cycle and two or more persons riding cycles shall not overtake another vehicle at the same time.

(3) No person riding or seated on a cycle on a road shall take hold of any other vehicle in motion.

(4) No person riding a cycle on a road shall deliberately cause such cycle to swerve from side to side.

(5) No person riding a cycle on a road shall carry thereon any animal or article which obstructs his view or which prevents him from exercising complete control over the movements of such cycle.

(6) No person riding a cycle on a road shall carry thereon more than one person who shall not be carried otherwise than sitting on a carrier securely fixed to the cycle or on a step especially fitted to carry a passenger.

(7) A person riding a cycle on a road shall do so with at least one hand on the handle-bars of such cycle.

(8) Whenever a road authority has set aside a portion of a road for use by persons riding cycles, no person shall ride a cycle on any other portion of such road, except for the purpose of crossing the road.

(9) Any person contravening or failing to comply with any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P20.

## **PART XII**

### ***Miscellaneous Provisions as to Roads (ss 97-106)***

#### **97. Restrictions on pedestrians**

(1) Whenever a sidewalk or footpath abuts on a road, a pedestrian shall not walk on such road except for the purpose of crossing from one side of such road to the other or for some other sufficient reason.

(2) A pedestrian on a road which has no sidewalk or footpath abutting on it shall walk as near as is practicable to the edge of the road on his right hand side so as to face on-coming traffic on such road.

(3) A pedestrian shall not cross a road without satisfying himself that the road is sufficiently free of on-coming traffic to permit him to do so in safety.

(4) A pedestrian, when crossing a road, shall not loiter thereon but shall proceed with due despatch.

(5) A pedestrian on a road shall not conduct himself in such a manner as to or as is likely to constitute a source of danger to himself or to other traffic which is or may be on such road.

#### **98. Pedestrian crossings**

The Minister may make regulations with respect to the precedence of vehicles and pedestrians respectively and generally with respect to the movement of traffic (including pedestrians) on roads, and at or in the vicinity of road crossings, including the establishment of special crossings for pedestrians, the traffic signs to be used on or near road crossings or pedestrian crossings, and such other matters as may be necessary or desirable in connection with such crossings.

#### **99. Restrictions on animal-drawn vehicles on roads**

(1) No person shall operate an animal-drawn vehicle on a road unless the vehicle and the harness and other equipment thereof are in an efficient and safe condition.

(2) The owner of an animal-drawn vehicle shall not cause or permit such vehicle to be used on a road by any person who is not competent to drive and control such vehicle.

(3) The driver of an animal-drawn vehicle on a road shall at all times give his undivided attention to the driving of the vehicle under his control and, if the vehicle is standing on a road, the driver shall not cease to retain control over every animal which is still harnessed to the vehicle unless some other person competent to do so takes charge of every such animal or every such animal is so fastened that it cannot move from the place where it has been left.

(4) The driver or other person in charge of a vehicle drawn by any animal shall not, on a road outside an urban area, permit such vehicle to follow any other vehicle similarly drawn at a distance of less than 150 metres reckoned from the foremost animal of such first-mentioned vehicle, except for the purpose of overtaking a vehicle travelling at a slower speed or when a vehicle travelling at a greater speed, having overtaken such vehicle, is drawing away from it.

(5) The owner, driver or person in charge of a vehicle drawn by animals, shall not allow an animal which is of materially defective vision to be used for drawing such vehicle on a road.

(6) No person shall drive or conduct any vehicle drawn by animals on a road without having reins to guide the animals, unless a person leads or drives the animals in such a manner as to have proper control over them.

(7) Any person who contravenes or fails to comply with any of the provisions of this section shall be liable to a fine not exceeding P100.

#### **100. Offences in connection with roads**

(1) No person shall on any road-

- (a) wilfully or negligently lead or drive any animal or vehicle on a footpath or in a road drain;
- (b) play any games to the annoyance, inconvenience or danger of persons using the road;
- (c) wilfully obstruct the free passage of persons or vehicles passing along the road.

(2) No owner or person in charge of any cattle or other animals shall-

- (a) permit such cattle or other animals to be on a main road unless they are attended by a person in such a manner as to have proper control over them;
- (b) leave such cattle or other animals in a place from which they are likely to stray on to a main road,

and any person who contravenes any of the provisions of this subsection shall be guilty of an offence and shall be sentenced to a fine of not less than P1000,00 or more than P3 000,00, or to imprisonment for a term of not less than six months or more than 12 months, or to both.

(3) Any person driving or conducting any cattle, dog or other animal along the carriageway of a main road shall keep it or them as close as possible to the edge of the carriageway on the left hand side, allowing on-coming traffic to pass on his right.

(4) No person shall, on a main road or a road proclaimed as a public road under the Public Roads Act-

- (a) use a vehicle drawn by a team of more than 18 oxen or of more than six donkeys, mules or horses;
- (b) use a vehicle drawn by a team of animals which are more than two abreast.

(5) The Minister may, by order, declare any road to be a main road for the purposes of this section.

#### **101. Offences in connection with gates by which cattle might gain access to certain roads**

(1) No person shall-

- (a) open or unfasten a gate which gives access, either directly or indirectly, to a road habitually used by motor vehicles and by which cattle might gain access to the road, except for the purpose of then and there passing through the gate, with or without any vehicle or animals in his care, or of enabling some other person so to pass; or
- (b) having passed through a gate such as is referred to in paragraph (a) or enabled some other person so to pass, fail immediately to close and securely fasten the gate or ensure that it is closed and securely fastened.

(2) Where, in any proceedings in respect of a contravention of any of the provisions of this section, it is alleged in the charge that a gate gave access to a road habitually used by motor vehicles and by which cattle might have gained access to the road, the court shall presume that the allegation is true unless the contrary is proved.

(3) Any person who contravenes any of the provisions of this section shall be liable to a fine not exceeding P200.

#### **102. Encroachment on and damage to roads**

(1) Any person who, without the written permission of the appropriate road authority-

- (a) encroaches on a road or on any land reserved therefor at the side or sides thereof by making or erecting any building, fence, ditch, advertisement sign or other obstacle or by digging thereon or by planting or sowing any tree, shrub or seeds thereon;
- (b) leaves on a road any timber, stones or other material so as to obstruct or endanger persons using the road or wilfully or negligently deposits or causes or permits to be deposited upon a road or any land reserved therefor at the side or sides thereof any petrol or other liquid fuel or any oil, grease or other inflammable or offensive matter or any ashes, bottle, can, tin, carton, food remnants or other refuse or litter whatsoever;
- (c) digs up, removes, alters or damages in any way the soil or surface of a road, or of any

land reserved therefor at the side or sides thereof, or if done for the purpose of moving a vehicle without immediately thereafter making good the damage;

- (d) wilfully fills up, alters or obstructs any ditch or drain, whether on a road or contiguous thereto, made by or under the control of the road authority to carry water off the road or to keep it from flowing on to the road;
- (e) allows any sludge or any filthy or noisome matter to flow from any building or land in his occupation on to a road or into any ditch or drain made by, or under the control of, the road authority;
- (f) causes or allows any timber, sledge, plough or other heavy material, vehicle or implement not wholly raised above the ground on wheels to be dragged on a road;
- (g) pitches any tent, booth or stall on a road; or
- (h) makes any fire on any road,

shall be guilty of an offence and shall be sentenced to not less than P100,00 or more than P500,00, or to imprisonment for a term of not less than two months or more than six months, or to both:

Provided that any person who has been unable to avoid creating an obstruction such as that referred to in subsection (1)(b) due to any reason beyond his control shall not be guilty of an offence if he takes the requisite steps to remove it as soon as possible and, if he cannot remove it immediately, to warn other road-users and the police of its presence.

(2) It shall be lawful for the road authority to remove anything whatsoever which has been placed or erected on a road or land reserved therefor in contravention of this section.

### **103. Prohibition on use of tracked vehicles**

(1) No person shall use or cause or permit to be used on any road any vehicle having ribbed, studded or spiked wheels or fitted with crawler type metal tracks:

Provided that this subsection shall not apply-

- (i) where such wheels or tracks are fitted with special rims or street plates which would ensure an even contact with the road surface;
- (ii) in any case where the road authority has given permission in writing for the use of such a vehicle and such permission is carried on the vehicle to which it relates.

(2) No person shall use or cause or permit to be used on any road any vehicle not fitted with pneumatic tyres, except in the case of an ox-drawn vehicle being used on a road set aside for ox-drawn vehicles or on a road where no alternative road in a reasonably usable condition exists for ox-drawn vehicles.

(3) No person shall use or cause or permit to be used on any road which has a bituminous surface any vehicle the wheels of which are fitted with chains or any device of a similar kind which damage or are likely to damage the road surface.

(4) Any person who contravenes any of the provisions of this section shall be liable to a fine not exceeding P200.

### **104. Restriction with regard to use of bridge**

It shall not be lawful for the driver or person in charge of a vehicle to drive or haul the vehicle or cause it to be driven or hauled over any bridge on or near which a conspicuous notice has been placed to the effect that such a bridge is insufficient to carry traffic in excess of a specified weight, unless the gross weight of such vehicle and any trailer attached thereto is less than the weight specified or unless he has obtained the consent in writing of the road authority.

### **105. Non-liability of road authority for damage**

(1) A road authority shall not be liable for any loss or damage which may be caused to any person or property through the condition of a road or the failure of a road to sustain the weight of a vehicle.

(2) Nothing in this Act shall affect the right of the road authority or of any person to recover compensation from the owner or driver of any vehicle for any loss, damage or injury which may be sustained by the road authority or such person by the use of a vehicle.

(3) If any injury to a bridge or road or any traffic sign or other marker used on the bridge or road is caused through any contravention of this Act, it shall be lawful for the road authority to make good such injury and to recover the cost thereof from the person or persons responsible and the certificate of the road authority of the amount of the cost of making good such injury shall be conclusive evidence of the amount payable by such person or persons.

**106. Requirements for certain public service vehicles** (1) No person shall drive a call-cab, taxi, mini-bus, midi-bus or any motor omnibus, used for hire or reward unless he is the holder of a valid PrDP "P" for that class of vehicle.

(2) No person shall drive a vehicle conveying goods for hire or reward or on own account unless he is the holder of a PrDP "G" or PrDP "H" for that class of vehicle.

(3) No person shall drive a school-bus unless he is the holder of a valid PrDP "P" for that class of vehicle and the sign "school-bus" is displayed in front and at the back of the vehicle.

### **PART XIII**

#### ***Public Service Vehicles (ss 107-115)***

##### **107. Public service vehicles**

(1) No person shall use any public service vehicle on a road, unless there is in force in relation to such vehicle a public service vehicle licence issued under this Part, (hereinafter referred to as a "public service vehicle licence").

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P400.

##### **108. Application for public service vehicle licence**

(1) Application for the licensing of any motor vehicle as a public service vehicle shall be made by the registered owner of such vehicle to a licensing officer in the prescribed form and in the prescribed manner.

(2) No public service vehicle licence shall be issued in respect of any motor vehicle-

- (a) other than to the registered owner of such vehicle;
- (b) which is not registered and licensed under Parts II and III of this Act;
- (c) which does not comply with the provisions of this Act as to construction, equipment and use;
- (d) which is intended to be used as a motor omnibus, unless the owner of such vehicle is in possession of a valid road service licence in respect thereof issued under any written law relating to transport licensing and unless such vehicle complies with any conditions attached to such licence;
- (e) which is intended to be used as a taxicab or private hire vehicle, unless such vehicle has been registered or licensed as a taxicab or private hire vehicle under any other written law relating to such vehicles;
- (f) unless a certificate is granted to the applicant by a police officer of or above the rank of Assistant Superintendent or by the District Commissioner of the district in which the applicant is residing, certifying that the applicant is a fit and proper person to hold such a licence; or
- (g) which has not previously been so licensed, or the construction of which has been altered or modified in any way since it was last so licensed, and which is intended to be used as a motor omnibus, unless the owner of the vehicle has obtained in respect thereof a certificate in the prescribed form signed by a motor vehicle examiner, certifying that the vehicle is fit for the purpose for which it is to be licensed, and has paid the prescribed fee.

##### **109. Issue and conditions of public service licence**

(1) The licensing officer, if he is satisfied that the provisions of section 108(2) have been complied with, shall, upon payment of the prescribed fee, issue a public service vehicle licence in the prescribed form.

(2) A public service vehicle licence may be issued for such period as may be prescribed:



Provided that, where a period is so prescribed, a licence issued before the period is prescribed shall not be valid solely by reason that the period for which it was issued is different from that prescribed.

(3) Where any public service vehicle licence is cancelled for any reason during the period of its validity, no refund of licence fee shall be made in respect of the unexpired period of such licence.

(4) Every licence issued under this section shall be carried on the vehicle to which it relates in the prescribed manner.

(5) A public service vehicle licence shall not be transferred or assigned to any other person or vehicle.

(6) Whenever the holder of any public service vehicle licence ceases to be the owner of the vehicle specified in the licence, he shall forthwith return such licence to the Director for cancellation, and the vehicle shall from the date of such change of ownership cease to be licensed as a public service vehicle.

(7) If any public service vehicle licence is lost, or becomes illegible, the owner of the vehicle to which such licence relates shall forthwith apply to the Director in the prescribed form for a duplicate thereof and shall return any illegible licence to the Director for cancellation; the Director shall, on payment of the prescribed fee and on being satisfied as to the loss or illegibility, issue a duplicate of such licence.

(8) Where any public service vehicle licence which has been lost is subsequently found, any duplicate public service vehicle licence issued under this subsection shall forthwith be delivered up to the Director for cancellation.

#### **110. Drivers and conductors of public service vehicles**

(1) Any person who drives or acts as the conductor of a public service vehicle without being licensed for that purpose under this Part, and any person who employs or permits any person who is not so licensed shall be guilty of an offence and shall be sentenced to a fine of not less than P300,00 or more than P1 000,00, or to imprisonment for a term of not less than three months or more than 12 months, and, for each subsequent offence, to a fine of not less than P600,00 or more than P2 000,00, or to imprisonment for a term of not less than six months or more than 24 months.

(2) Subject to the other provisions of this section and to such other provisions as may be prescribed for the purposes of this section, upon application being made in the prescribed manner and form and upon payment of the prescribed fee, the Director shall issue the licence applied for.

(3) In the case of an application under this section for a licence to drive a public service vehicle, the Director shall refuse to issue the licence unless-

- (a) he is satisfied that the applicant has attained the age of 21 years;
- (b) the applicant holds and produces a driving licence issued under Part VI valid for light vehicles or heavy commercial vehicles and has held the licence for not less than two years;
- (c) the applicant produces a certificate, dated within the immediately preceding period of 15 days and signed by a police officer of or above the rank of Assistant Superintendent, certifying that the applicant has not, to the signatory's knowledge, within the immediately preceding period of five years-
  - (i) been convicted, by a court within or outside Botswana, of an offence against any person or of an offence against property involving dishonesty, which is a criminal offence under the law of Botswana, and sentenced therefor to a term of imprisonment (whether or not the operation of the sentence was suspended), other than a term of imprisonment in respect of the non-payment of a fine imposed for the offence, in respect of which offence the applicant has not been granted a free pardon, the conviction or sentence has not been set aside or some other



- (ii) punishment has not been substituted for such imprisonment; or
    - (ii) been disqualified by such a court from driving or from holding or obtaining a driving licence for any period, which disqualification has not been set aside; and
  - (d) the applicant produces a certificate, dated within the immediately preceding period of 30 days and signed by a medical practitioner, certifying that the applicant is not, in the signatory's opinion, suffering from any disease or disability which would impair or be likely to impair his ability to drive vehicles of the class or classes in respect of which the application is made.
- (4) In the case of an application under this section for a public service vehicle driver's licence, the Director may refuse to issue the licence until the applicant has passed a driving test of the class or classes of vehicle in respect of which the application is made.
- (5) In the case of an application under this section for a licence to act as the conductor of a public service vehicle, the Director shall refuse to issue the licence unless-
- (a) he is satisfied that the applicant has attained the age of 18 years; and
  - (b) the applicant produces a certificate, dated within the immediately preceding period of 15 days and signed by a police officer of or above the rank of Assistant Superintendent, certifying that the applicant has not, to the signatory's knowledge, within the immediately preceding period of five years been convicted, by a court within or outside Botswana, of an offence against any person or of an offence against property involving dishonesty, which is a criminal offence under the law of Botswana, and sentenced therefor to a term of imprisonment (whether or not the operation of the sentence was suspended), other than a term of imprisonment in respect of the non-payment of a fine imposed for the offence, in respect of which offence the applicant has not been granted a free pardon, the conviction or sentence has not been set aside or some other punishment has not been substituted for such imprisonment.
- (6) Where a person wishing to apply for a public service vehicle driver's or conductor's licence is unable to obtain the certificate he is required to produce under subsection (3)(c) or (5)(b), as the case may be, by reason of his having been convicted and sentenced as therein described, he may apply in writing to the Minister to direct the Director-
- (a) in the case of an application by that person for a public service vehicle driver's licence, to waive the requirement that the certificate certify the matters prescribed by subsection (3)(c)(i); or
  - (b) in the case of an application by that person for a public service vehicle conductor's licence, to waive the requirement that he produce a certificate.
- (7) Every application under subsection (6) shall set out in full the submissions which the applicant wishes the Minister to take into account in determining the application.
- (8) The Minister shall consider every application made to him under subsection (6) and may, if he is satisfied that the interests of the public are unlikely to be prejudiced thereby, direct the Director in writing to waive the relevant requirement, and the Director shall comply with that direction.
- (9) The Director may issue a public service vehicle driver's or conductor's licence subject to such conditions as he thinks fit.
- (10) A public service vehicle driver's or conductor's licence shall be valid for two years unless cancelled earlier under this Part; and, where such a licence is cancelled for any reason, no refund of the licence fee shall be payable in respect of any unexpired period of the licence.
- (11) A person licensed as a driver or conductor of a public service vehicle shall not drive or act as the conductor of such a vehicle whilst it is carrying passengers on a road unless he is wearing the prescribed badge.
- (12) In the event of a public service vehicle driver's or conductor's licence or badge being lost, destroyed or defaced or becoming illegible, the holder thereof shall forthwith apply to the Director in such form as he may require, together with the prescribed fee and any licence or

badge which has been defaced or become illegible, for a duplicate licence or badge to be issued.

(13) Where the original public service vehicle driver's or conductor's licence or badge is recovered by the holder thereof after being lost, he shall forthwith return to the Director any duplicate thereof which may have been issued to him.

#### **111. Power to cancel licence and disqualify**

(1) Any licence issued under this Part may be cancelled at any time by the Director if he is satisfied that, by reason of the conduct of the holder of such licence or the condition of any vehicle in respect of which the licence is issued such cancellation would be in the public interest; and upon receipt of a notice of such cancellation, the licence holder shall forthwith deliver up such licence to the Director.

(2) Any court before which a person is convicted of any offence under this Part, or any offence relating to the construction, equipment, condition or use of a public service vehicle may-

- (a) cancel any licence issued under this Part to the accused, and disqualify him from holding or obtaining a similar licence for a stated period; or
- (b) cause or direct particulars of the conviction to be endorsed on any licence held by the accused.

(3) Where the court has made any order under subsection (2)(a), it shall require and obtain production of the licence concerned and forward it to the Director together with a notice of the conviction and order.

(4) Any such licence issued to the accused after the period of disqualification shall be endorsed with particulars of the conviction and order, unless the Director otherwise directs.

#### **112. Right of appeal**

Any person aggrieved by the refusal or failure to grant or by the cancellation of a licence under this Part or by any condition attached thereto by the Director, or by the refusal of a police officer or a District Commissioner to issue a certificate required under section 108(2)(f), may appeal in writing to a magistrate's court presided over by a Magistrate Grade I or over, whose decision shall be final, and any such licence shall continue in force during the period of its validity until the appeal has been disposed of.

#### **113. Passengers and loads**

(1) The Director shall in respect of any public service vehicle, and in accordance with this Act, determine the maximum number of passengers, whether sitting or standing, and the weight of baggage or goods allowed to be carried at any time on such vehicle or on any vehicle of a similar class or description.

(2) If any public service vehicle carries more persons, baggage or goods than it is licensed to carry, the driver, the conductor and the owner of such vehicle, or the agent of such owner, shall each be guilty of an offence and liable to a fine not exceeding P200:

Provided that the owner or agent shall not be guilty as aforesaid if such offence is committed without his knowledge or consent and if he took all reasonable precautions to prevent it.

(3) No person who is requested by the owner, owner's agent, driver or conductor of a public service vehicle not to enter the vehicle shall enter or attempt to enter the vehicle when it is carrying the full number of persons it is licensed to carry; and any person disobeying such a request shall be guilty of an offence and liable to a fine not exceeding P20.

(4) For the purposes of this section-

- (a) a child who is under the apparent age of five years and who does not occupy a seat shall not be counted as a person;
- (b) any two children each of whom is over the apparent age of five years and under the apparent age of 12 years shall count as one passenger.

#### **114. Touting**

No person shall, for the purpose of inviting or obtaining passengers for any public

service vehicle, make any noise or sound any instrument, or do anything which causes or is likely to cause annoyance, inconvenience or danger to the public.

#### **115. Penalties**

Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence and liable, where no other penalty is specifically provided, to a fine not exceeding P100.

### **PART XIV**

#### **General (ss 116-133)**

#### **116. Inspection of vehicles**

(1) A police officer in uniform may stop any vehicle, and the Director, a police officer, licensing officer or motor vehicle examiner may-

- (a) enter and inspect any vehicle;
- (b) drive any vehicle which he is licensed to drive or cause any vehicle to be driven; and
- (c) upon reasonable suspicion of any offence under this Act, enter any premises or order and require the owner of any vehicle to bring the vehicle to him,

for the purpose of carrying out any examination and test of any vehicle with a view to ascertaining whether this Act is being complied with.

(2) If any person is not attired in official uniform when exercising any authority conferred upon him by this Act, he shall, if so required by any person in charge of any vehicle or the owner or occupier of any premises in respect of which such authority is being exercised, produce an official identification document bearing his photograph and signature.

(3) Any person who fails to comply with any instruction or order given under this section shall be guilty of an offence and liable to a fine not exceeding P50.

#### **117. Removal of vehicles from road**

(1) Where any vehicle is found in use on a road in contravention of the provisions of this Act, or where any vehicle has been left on any road or other public place in such circumstances as to make it appear that such vehicle has been abandoned or should be removed to a place of safety, or where any vehicle has been left on a road in a position which causes or is likely to cause danger to other road users and the owner or driver cannot readily be found, any police officer or any motor vehicle examiner may take the vehicle or cause it to be taken to a police station or other place of safety by such method, route and under such conditions as he may consider necessary, having regard to all the circumstances of the case.

(2) Where under subsection (1) it is considered necessary to have a vehicle towed, transported, driven or otherwise removed, or where it is considered necessary to carry out emergency repairs or to adjust or off-load any part of the load of such vehicle, any expense incurred thereby shall be payable by the owner of the vehicle and no such vehicle shall be released from the police station or other place of safety until either-

- (a) such expenses have been paid to the person to whom they are due; or
- (b) such person certifies in writing that he is willing to allow the vehicle to be removed before he receives such expenses due to him.

(3) A police officer or motor vehicle examiner who orders the removal of a vehicle under this section shall not be held liable for any damage to or loss of any item from such vehicle during its removal to or detention at a police station or other place of safety.

(4) Any police officer of or above the rank of Inspector or who is in charge of a police station, any licensing officer, any motor vehicle examiner or the Director, if he is of the opinion that any vehicle is being used in contravention of section 61 or 62 or in contravention of any regulations relating to the construction, use and equipment of vehicles, may by order prohibit the use of such vehicle, under such conditions and for such purposes as he may consider necessary for the safety of the public or to ensure that such vehicle does comply with the aforementioned provisions; and any such order shall remain in force until the repairs specified therein have been satisfactorily completed and the vehicle has been certified as complying with

the aforesaid conditions with respect to construction, use, equipment and weight.

(5) Any person who uses any vehicle in respect of which any prohibition or restriction is in force other than in conformity with any conditions or for such purpose as may have been specified shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months, or to both.

(6) Any order issued under this section shall be in writing.

(7) Where any vehicle is required to be examined and tested for the purpose of being certified as complying with the provisions of this Act, the fee, if any, shall be paid by the owner of the vehicle.

(8) Any person who fails to comply with any instruction or order given under this section shall be guilty of an offence and liable to a fine not exceeding P50.

#### **118. Detention of vehicles**

A police officer may detain at a police station or other place of safety any vehicle which has been removed from a road or other public place under section 117 until such inquiries have been made by the police as they may think necessary in the circumstances of the case.

#### **119. Certificates admissible in evidence**

(1) If in any proceedings under this Act any question arises as to whether a vehicle does or does not comply with this Act, the certificate of a motor vehicle examiner to the effect that he has examined the vehicle and as to the result of his examination may be read as evidence although the motor vehicle examiner is not called as a witness.

(2) The court, if it thinks fit, may summon and examine the motor vehicle examiner as to the subject matter of his certificate.

(3) In any proceedings under this Act an extract from the records of registered vehicles, certified under the hand of the Director or a licensing officer, may be received in evidence although the Director or licensing officer is not called as a witness, and shall be *prima facie* evidence of the facts therein set forth.

#### **120. Owner or other person to furnish name and address of driver of vehicle**

The owner of any vehicle and any other person who is able to provide such information shall, as soon as reasonably possible and in any case within seven days after having received a verbal or written request for such information, give such information as he may be required by a police officer to give as to the identity of the driver of such vehicle.

#### **121. Owner to keep list of drivers employed**

(1) Any person who employs any other person to drive a motor vehicle shall keep a written record of the name, address and driving licence number of such other person.

(2) Such record shall be preserved for a period of six months after the date when such person ceases to be employed as a driver, and shall be made available to any police officer on demand.

(3) Any person who fails to comply with the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P50.

#### **122. Verification of facts**

Any person to whom any application is made for anything to be done under this Act may require any facts stated in the application to be verified to his satisfaction.

#### **123. Giving false information**

Any person who makes any statement which to his knowledge is false or in any respect misleading in connection with any information lawfully demanded or required under this Act shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months, or to both, and if such statement is made to any person in connection with an application for any licence or permit the court convicting such person may also order that any licence or permit issued as a result of such application shall be of no effect and that no similar licence or permit shall be issued for a stated period.

#### **124. Fraudulent imitation, etc. of documents**

(1) Any person who fraudulently imitates, alters, mutilates, destroys or uses, or fraudulently lends or allows to be used by any other person, any licence, permit, document, plate or mark issued or prescribed under this Act shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months, or to both.

(2) A police officer may after issuing a receipt to the person concerned take possession of any licence, permit, document, plate or mark relating to any suspected offence under this section.

#### **125. Endorsement of licence to be proof of conviction**

Notwithstanding anything to the contrary contained in any written law, it shall be lawful for a court to accept the particulars of endorsements on any licence issued in compliance with this Act as *prima facie* evidence of previous convictions recorded against the holder thereof.

#### **126. Notice to attend court**

(1) Notwithstanding anything to the contrary contained in any written law, a police officer may serve, either personally or by post, upon any person who is reasonably suspected of having committed any offence in connection with the use of any vehicle which is punishable only by a fine, or by a fine and imprisonment for a period not exceeding six months, a notice in the prescribed form requiring such person to attend court in answer to the charges stated thereon, at such place and on such date and time (not being less than 14 days from the date of such service) as are shown on such notice or to appear by advocate or to enter a written plea of guilty:

Provided that-

- (i) such notice shall be served not later than three months from the date upon which the offence is alleged to have been committed;
- (ii) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that the name and address of the accused could not with reasonable diligence have been ascertained in time for such notice to be served as aforesaid, or that the accused by his own conduct contributed to the failure.

(2) Such notice as aforesaid shall for all purposes be regarded as a summons issued under the Criminal Procedure and Evidence Act.

(3) A copy of such notice as aforesaid shall be placed before the court by which the charge is to be heard before the time fixed for such hearing.

**127. Axle load, weight and dimensions** (1) Notwithstanding and in addition to the provisions of section 126 and any other provision of the Act, the following provisions of this section shall apply in respect of axle-load violations, and to offences under sections 61 and 62 of this Act.

(2) The Minister may by notice in the *Gazette* appoint specified public officers to be authorized officers for the purposes of this section.

(3) Such an authorized officer may issue notification of a traffic offence to any person reasonably suspected of exceeding the axle load restrictions prescribed by the Road Transport (Permits) Regulations, or of offences under sections 61 and 62 of this Act setting out the offence, and the penalty for such offence in accordance with the tables set out in the Schedule to or otherwise in this Act.

(4) If the offender wishes to plead guilty in writing, the authorized officer is hereby empowered to accept such written plea, and the appropriate penalty as set out in the said Schedule or otherwise in this Act. He will then forward the notification of the written plea of guilty, and the appropriate penalty, to the nearest court in the area in which the offence took place.

(5) If the offender does not plead guilty in writing and pay the appropriate penalty, the procedure as set out in section 126 shall be followed, as appropriate, the authorized officer being substituted for the police officer therein referred to, and the offences and penalties being



deemed to be Traffic offences and penalties prescribed by the Minister in accordance with section 126(1).

(6) Where the offending axle weight exceeds the maximum shown in the Schedule, the authorized officer shall suspend the permit with immediate effect, and send a report to the Road Transport Controller appointed under section 3 of the Road Transport (Permits) Act who may, if he considers the circumstances so warrant, revoke the permit, or return it upon such conditions as he may consider appropriate.

(7) Notwithstanding any other provision in this section, where there is an axle load violation, an authorized officer shall require any excess load to be off-loaded before allowing the vehicle to proceed further and where there are offences under sections 61 and 62 of this Act an authorized officer shall require the offending vehicle to be made to conform with the requirements of the sections before allowing it to proceed further.

(8) In respect of an offence under section 61 or section 62 of this Act, and notwithstanding the provisions of section 63, where the offender wishes to plead guilty in writing and pay the appropriate penalty to the authorized officer, the statutory penalty for the offence shall be P300.

### **128. Scheduled traffic offences**

(1) The Minister may, by regulation, prescribe-

- (a) a schedule of traffic offences (in this section referred to as the "scheduled offences") which may be dealt with and prosecuted in accordance with the provisions of this section, and may for the purposes of this section prescribe a statutory penalty, which shall not exceed the penalty prescribed for such offence by this Act, for any of the scheduled offences to be so dealt with and prosecuted; and
- (b) a form of police notification of a traffic offence for use under this section.

(2) Subject as herein, any statutory penalty prescribed under subsection (1) shall, notwithstanding that any other penalty may be prescribed by this Act, have effect for offences dealt with under this section.

(3) Notwithstanding any provision contained in this or any other written law, it shall be lawful for any police officer to serve, either personally or by affixing the same prominently to the vehicle concerned, upon the owner or person in charge of any motor vehicle who is reasonably suspected of having committed any of the scheduled offences, a police notification of a traffic offence in the prescribed form charging such person with having committed the offence or offences indicated in the notification and requiring such person to attend court to answer such charge or charges, at such time (not being sooner than 21 days after the date of such service) as is shown on such notification.

(4) Such notification as aforesaid shall for all purposes be regarded as a summons issued under the Criminal Procedure and Evidence Act:

Provided that the person served with the notification shall not be obliged to attend court in answer to the charge if he has pleaded guilty in writing and sent the notification, together with the amount of the statutory penalty or penalties for the offence or offences to which he has pleaded guilty by prepaid registered post or by hand, to the address indicated in the notification so as to reach that address within the time indicated in the notification.

(5) A copy of the notification shall be placed before the court by which the charge is to be dealt with at the time fixed for the attendance of the accused to answer the charge, and, unless the court otherwise directs, such copy may be used as a charge sheet.

(6) If any person having been served with a notification issued under this section fails either to attend the court on the day and at the time specified in such notice or to plead guilty and pay the statutory penalty in the manner indicated before such day, he may be brought before the court either by summons or by warrant.

(7) If any person served with a notification under this section fails to comply with such notification, and cannot with reasonable diligence be found, the registered owner of the vehicle



or, when the registered owner is a company, the person appointed by the company for the purposes of this subsection or, in default of such appointment, the secretary, or person performing the duties of secretary, of such company, shall be liable for the offence unless it is shown by such person, owner or secretary, as the case may be, that he was not driving or in charge of the vehicle at the relevant time and he satisfies the court that he has given all information at his disposal to the police or the court to enable the person who was driving or in charge at the relevant time to be summoned.

(8) If any person, other than an authorized person, removes from a vehicle a police notification of a traffic offence which has been affixed thereto by a police officer in pursuance of this section, or any portion of such notification, or tears or defaces the same, he shall be guilty of an offence and liable for a first offence to a fine not exceeding P20 and for each subsequent offence to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

(9) For the purposes of subsection (8), "authorized person" means the driver, owner or person in charge of the vehicle or any person authorized by the owner to remove the notification.

(10) Any driver, owner or person in charge of a vehicle who finds affixed thereto a police notification of a traffic offence which appears to have been torn or defaced so that it is not fully legible shall within two days report, either in writing or personally, to the police station of the area in which the notification was found, and if he fails so to report he shall be guilty of an offence and liable to a fine not exceeding P10.

(11) The provisions of this section shall be without prejudice to the power of the police to proceed in the normal manner against the accused person, in which case the statutory penalties prescribed under this section and the other provisions of this section shall not apply.

### **129. General penalty**

(1) Any person who acts in contravention of or fails to comply with any provision of this Act, or who acts in contravention of or who fails to comply with the conditions of any licence, order, demand, requirement or direction issued under or in pursuance of this Act, shall be guilty of an offence.

(2) Any person who is guilty of an offence under this Act for which no penalty is otherwise provided shall be liable-

- (a) for a first offence, to a fine not exceeding P50; and
- (b) for a second or subsequent offence, to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both.

### **130. Regulations**

(1) The Minister may make regulations in respect of any matter contemplated, required or permitted to be prescribed under this Act and generally as to the use of any vehicle on a road, its construction and equipment, and the conditions under which it may be so used, and in any other respect for the better carrying out of this Act, and in particular, but without prejudice to the generality of the foregoing, such regulations may make provision concerning-

- (a) the height and width of any load which may be carried by any vehicle, the manner in which it may be loaded, and the extent of any projection or overhang of the load;
- (b) the emission of exhaust gas, smoke, fuel, oil, sparks, ashes or grit from any vehicle on a road;
- (c) excessive noise made by any vehicle on a road;
- (d) the towing of any vehicle by another vehicle;
- (e) the conditions in which a lefthand-drive vehicle may be used on a road;
- (f) the number and nature of brakes to be used on any vehicle, or any class of vehicle, and for ensuring that brakes and steering gear shall be efficient and in proper working order;
- (g) the furnishing of accident reports and statistics of any nature whatsoever;

- (h) the fees to be charged for any purpose under this Act;
- (i) the carriage of persons as passengers on any vehicle which has been constructed or designed solely or primarily for the carriage of goods and not for the carriage of passengers and their effects;
- (j) the forms to be used for any purpose of this Act;
- (k) the weight of goods and passengers, the number of passengers which vehicles may carry, the method by which seating capacity may be determined and the gross weight of vehicles;
- (l) the weight and size of vehicles which may be permitted on any class of road and the manner in which, if at all, vehicles whose weight or size is in excess of the prescribed maximum weight or size may be allowed to use any road;
- (m) the carrying on any class of vehicle or of vehicles used by any particular class of persons of any special identification plates;
- (n) all matters relating to the inspection, registration, licensing, regulation and control of vehicles and to the conditions which may be imposed in regard thereto;
- (o) the regulation of the conduct of drivers and conductors of public service vehicles and the wearing by them of special badges and uniforms;
- (p) conditions of service and hours of work for persons employed by owners of public service and commercial vehicles;
- (q) the regulation of the carriage of luggage and goods on public service vehicles;
- (r) the rules of the road, and the signals to be given and obeyed by the drivers of vehicles;
- (s) the procedure to be adopted and the conditions to be observed in connection with the issue of documents necessary for international travel, and the use of such documents in Botswana;
- (t) the conditions in which motor vehicles licensed outside Botswana may be used within Botswana and in which persons holding driving licences or permits issued outside Botswana may be allowed to drive within Botswana;
- (u) giving effect to any convention or agreement relating to the circulation of traffic;
- (v) measures for controlling or prohibiting the movement of vehicles of any specified class or description between sunset and sunrise;
- (w) measures for generally restricting or regulating the use of vehicles in such manner as the circumstances and safety on the roads may appear to him to require;
- (x) any matter relating to safety in connection with the use of vehicles, including special safety equipment or apparel to be used in vehicles or to be worn by the drivers of vehicles;
- (y) the regulation of motor dealers and the records that they may be required to keep and maintain.

(2) In any case when the Minister has not prescribed a suitable form for the purposes of this Act, the Director may direct that a particular form shall be used for a particular purpose.

(3) Notwithstanding the provisions of Part II of this Act, regulations made by the Minister may, where for reasons of security, improvement of control over vehicles and their identification, the high incidence of vehicle thefts, or for any other sufficient reason, he considers such a course to be necessary or desirable, provide that vehicles and trailers previously registered under this Act and allocated registration numbers and registration books, should have such registration cancelled, should be required to be re-registered and should be allocated new registration numbers and new registration books, on such terms as he may specify.

### **131. Road Safety Committee and National Road Safety Fund**

Regulations made by the Minister under section 130 may provide for-

- (a) the establishment and constitution of a Road Safety Committee, the procedure of such Committee and the powers that may be exercised, or the duties that may be performed by such Committee;

- (b) the establishment and management of a National Road Safety Fund, the revenues of which shall consist of such moneys as may be provided by Parliament, the proceeds of any levy provided for under paragraph (c) and such other moneys as may be provided for in the regulations;
- (c) the imposition and collection of a levy to be paid annually by all users or owners of vehicles in Botswana or visiting Botswana.

### **132. Power to suspend, and exempt from, certain provisions**

The Minister may, by order published in the *Gazette*, suspend, restrict or limit the application of any of the provisions of this Act, either generally or in respect of any particular class or classes or description of vehicle, for such period and subject to such conditions as he may think fit, and, similarly, may exempt any vehicle or any class or classes or description of vehicle from all or any of such provisions.

**133. Admission of guilt** Notwithstanding the provisions of section 307(1) of the Criminal Procedure and Evidence Act, a police officer may accept a fine not exceeding P1000,00 from any person who, in accordance with the said section, signs a document admitting that he is guilty of an offence under this Act.

### **SCHEDULE (section 127)**

PENALTY IN PULA FOR SINGLE AND TWO AXLE GROUPS PER AXLE:

(a) FOUR TYRES PER AXLE-

(Maximum permitted axle weight - 8200 kg)

<i>Axle Weight in kg</i>	<i>Penalty in Pula</i>
8601 - 9500	250
9501 - 10500	400
10501 - 11500	600
11501 - 12500	900
12501 - 13500	1 830
14501 - 15500	2 500

(b) TWO TYRES PER AXLE-

(Maximum permitted axle weight - 7700 kg)

<i>Axle Weight in kg</i>	<i>Penalty in Pula</i>
8101 - 9000	260
9001 - 10000	410
10001 - 11000	650
11001 - 12000	1 000
12001 - 13000	1 450
13001 - 14000	2 040
14001 - 15000	2 830

## **CHAPTER 69:02 MOTOR VEHICLE ACCIDENT FUND ARRANGEMENT OF SECTIONS**

### **SECTION**

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Act 15, 2007,  
S.I. 65, 2008.

**An Act to provide for the establishment, management and administration of the Motor Vehicle Accident Fund; to provide for the compensation, care, benefits, medical management and rehabilitation of victims of motor vehicle accidents; to provide third party insurance cover to drivers and owners of motor vehicles and for matters incidental**

thereto and connected therewith.

[Date of Commencement: 1st August, 2008]

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

**1. Short title**

This Act may be cited as the Motor Vehicle Accident Fund Act.

**2. Interpretation**

In this Act, unless the context otherwise requires—

**"Board"** means the Board of the Motor Vehicle Accident Fund established under section 5;

**"Chief Executive Officer"** and **"Deputy Chief Executive Officer"** mean the head of the Fund and his or her deputy respectively appointed in accordance with subsections (1) and (6) of section 15;

**"claimant"** means any person who has suffered loss as a result of personal injury or death caused by a vehicle accident, and who makes a claim to the Fund in respect of that loss;

**"conveyed"**, in relation to the conveyance of a person in a vehicle, includes being in the act of entering or mounting the vehicle for the purpose of being so conveyed, or being in the act of alighting therefrom after having been so conveyed;

**"defect"**, in relation to a vehicle, means any remediable fault in the tyre or in the steering, braking or seat belt mechanism or any part thereof, and "defective" shall have a corresponding meaning;

**"dependant"**, in relation to a person involved in a vehicle accident, means any person being a spouse or minor child of such person, or a person with disabilities or indigent person, who is entitled upon proof of dependency, to monetary maintenance from such person;

**"Fund"** means the Motor Vehicle Accident Fund established under section 3;

**"hospital"** includes a nursing home, clinic and any other institution offering medical, rehabilitative, therapeutic or physiotherapy care or treatment;

**"health practitioner"** means a medical practitioner and an allied or health professional as defined in the Botswana Health Professions Act, and any other person concerned with the restoration of the physical or mental function of any person and registered in Botswana in terms of the said Act;

**"Minister"** means the Minister of Finance and Development Planning;

**"minor"** means a person below the age of 21 years;

**"motor vehicle"** means any vehicle, designed or adapted for propulsion or haulage on a road by means of power, excluding exclusively human or animal power, without the aid of rails, and includes any trailer designed to be drawn by a vehicle; and, notwithstanding the foregoing, includes an animal drawn cart where a vehicle accident involves a collision between such cart and another vehicle as defined by the first part of this definition;

**"offer"** includes an offer made without prejudice to rights reserved;

**"owner"** in relation to—

- (a) a vehicle which a dealer has in his or her possession in the course of business, means that dealer;
- (b) a vehicle which is the subject of a hire-purchase agreement, means the purchaser under the agreement in question; and
- (c) a vehicle which is leased under an agreement of lease for a period of at least six months, means the lessee concerned;

**"public office"** and **"public officer"** have the meanings assigned to them under the Constitution;

**"seat belt"** includes the mechanism by which the seat belt operates;

**"special circumstances"** shall not include any element of neglect, negligence,

omission or ignorance;

**"vehicle"** means a motor vehicle;

**"vehicle accident"** means any occurrence in which a vehicle is involved resulting in injury to or the death of any person.

## **PART II**

### ***Establishment of Fund (ss 3-11)***

#### **3. Continuance of Motor Vehicle Accident Fund**

(1) The Motor Vehicle Accident Fund, established in terms of section 3 of the Act repealed under section 33, shall continue to exist as if established under this Act.

(2) The Motor Vehicle Accident Fund is a body corporate with full capacity to sue or be sued in its own name, and to do all such things as bodies corporate may, by law, do and as may be necessary or incidental to the exercise of its powers and the performance of its functions under this Act.

#### **4. Purpose of Fund**

(1) The purpose for which the Fund is established is—

- (a) to provide compensation in the form of benefits as defined in section 20;
- (b) to provide third party insurance cover to drivers and owners of motor vehicles in accordance with the provisions of section 20;
- (c) to promote road safety and accident prevention; and
- (d) to deal with all matters incidental to the carrying out of paragraphs (a), (b) and (c).

(2) For the purposes of this section, "third party insurance cover" means indemnity against bodily injury, or death, arising out of a motor vehicle accident, including claimant's costs, emergency treatment and hospital expenses.

#### **5. Establishment of Board of Fund**

There shall be a Board of the Motor Vehicle Accident Fund, constituted in accordance with section 6, in which, subject to the provisions of section 16, the powers and functions of the Fund shall be vested.

#### **6. Membership of Board**

(1) The Board shall consist of the following eight members who shall be appointed by the Minister, and three of whom shall not be public officers—

- (a) one person who is a health practitioner;
- (b) one person who possesses investment skills;
- (c) one person who possesses road accident reconstruction or prevention skills or comes from the motor vehicle accident compensation industry;
- (d) one attorney or advocate;
- (e) one person who shall be a member of the Road Safety Committee, provided that such a person shall not be an employee of the Fund; and
- (f) three other persons holding such qualifications and possessing such skills and experience as the Minister considers appropriate for the proper functioning of the Board.

(2) The Minister shall appoint the Chairperson of the Board from amongst the eight members.

(3) Each member shall be appointed for a term not exceeding three years, as the Minister may decide, and shall be eligible for reappointment.

#### **7. Disqualification for appointment as Board member**

A person shall be ineligible for appointment to the Board if he or she—

- (a) has, in terms of any law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged,
  - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;



- (b) has been convicted—
  - (i) in Botswana, of a criminal offence for which he or she has not received a free pardon, or
  - (ii) outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment, with or without the option of a fine whether that sentence has been suspended or not, and for which he or she has not received a free pardon;
- (c) has been found guilty of unprofessional conduct by a competent tribunal, board or body legally constituted for the purpose of adjudicating on matters of discipline and conduct;
- (d) is a member of Parliament;
- (e) is a member of Council;
- (f) has been certified as being mentally disordered;
- (g) is a minor or other person under a legal disability; or
- (h) has been dismissed from employment in the public service following a conviction for an offence involving moral turpitude.

#### **8. Vacation of office by Board members**

A member of the Board shall vacate his or her office and such office shall become vacant—

- (a) if he or she becomes disqualified in terms of section 7 to hold office as a member of the Board;
- (b) he or she is adjudged bankrupt or insolvent;
- (c) he or she is absent from two consecutive meetings of the Board without reasonable cause;
- (d) upon his or her death;
- (e) is a member of Council;
- (f) upon the expiry of one month's notice, given in writing to the Minister, of his or her intention to resign his or her office;
- (g) upon the expiry of such time as the Minister may specify in writing, notifying him or her of his or her removal from office by the Minister;
- (h) if he or she becomes mentally or physically incapable of performing his or her duties as a member of the Board;
- (i) if he or she is convicted in Botswana, of a criminal offence under this Act or under any other Act for which he or she is sentenced to a term of imprisonment with or without the option of a fine, whether that term is suspended or not, or if he or she is convicted outside Botswana, of an offence which, if committed in Botswana, would have been a criminal offence the prescribed punishment for which would be imprisonment, with or without the option of a fine, and whether that sentence has been suspended or not.

#### **9. Removal and suspension of member from office**

(1) The Minister may, if he or she is satisfied that a member of the Board has acted improperly as such member, or is mentally or physically incapable of performing his or her duties efficiently, require that member, in writing, to vacate his or her office within such time as the Minister may specify.

(2) The Minister shall, in writing, suspend from office, a member of the Board against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member of the Board.

#### **10. Filling of vacancies of Board**

On the death of, or the vacating of office by, a member of the Board, the Minister shall, as soon as possible, appoint a person, in accordance with the provisions of section 6, for the remaining period of office of such deceased or vacating member.

#### **11. Payment of Board members**

A member of the Board shall be paid such remuneration, allowances and travelling expenses, incurred in connection with his or her service on the Board, as the Minister may determine.

### **PART III**

#### ***Meetings and Proceedings of Board (ss 12-14)***

##### **12. Meetings of Board**

(1) The Board shall meet as often as the business of the Fund may require, but not less frequently than once in each quarter of the year.

(2) Subject to the provisions of this Act, the Board may regulate its own procedure.

(3) The Chairperson of the Board shall convene ordinary meetings of the Board as often as the business of the Fund may require.

(4) Upon giving notice in writing of not less than seven days, a meeting of the Board may be called by the Chairperson:

Provided that if the urgency of any matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

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

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

(6) The conduct of business at Board meetings shall be minuted, and such minutes, when passed as correct by the Board, shall then be kept by the Fund as a permanent record.

(7) All decisions of the Board shall be passed by a simple majority of the members present thereat, on open ballot, with the Chairperson having a casting vote.

(8) A quorum at any meeting shall consist of any four members of the Board.

##### **13. Declaration of interest by Board Members**

(1) Where a member of the Board is present at a meeting of the Board or any committee or subcommittee of the Board at which any matter being discussed thereat is one in which the member is directly or indirectly interested in a private capacity, he or she shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question concerning such matter.

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

(3) A member who contravenes the provisions of this section may be removed from the Board by the Minister, in which case the Minister shall appoint another person to the Board in accordance with the provisions of section 6 for the remaining period of the removed member's term of office.

(4) Any member who fails to comply with the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding P10,000 or to imprisonment for a term not exceeding 10 years.

##### **14. Signification of documents**

All documents made by, and all decisions of, the Board, may be signified under the hand of the Chairperson of the Board or any member of the Board or senior officer of the Fund generally or specially authorised in that behalf.

### **PART IV**

#### ***Officers and Staff of Fund (s 15)***

##### **15. Appointment of Chief Executive Officer and other staff**

(1) The Fund shall have a Chief Executive Officer who shall be appointed by the Minister on the recommendation of the Board upon such terms and conditions and for such period as may be determined by the Minister.

(2) In advising the Minister in terms of this section the Board shall not recommend a person as Chief Executive Officer unless such person has the training, experience, and skills relevant to the Fund's needs, and is a person of integrity.

(3) The Chief Executive Officer shall, subject to such directions on matters of policy as may be given by the Board, be charged with the administration of the Fund, and of the supervision of the employees of the Fund.

(4) The Chief Executive Officer may resign from office by giving notice in writing to the Minister in terms of his or her contract of employment.

(5) The Chief Executive Officer may be removed from office by the Minister in terms of his or her contract of employment.

(6) The Board may, upon such terms and conditions and for such period as may be determined by the Board, appoint the Deputy Chief Executive Officer and any other senior officer as may be necessary for the proper discharge of the functions of the Fund.

(7) The Board shall not appoint a person as Deputy Chief Executive Officer or as a senior officer unless such person has the experience and skills relevant to the Fund's special needs.

(8) The dismissal of the Deputy Chief Executive Officer and other senior officers of the Fund shall be carried out by the Board on the recommendation of the Chief Executive Officer, and the dismissal of all other officers shall be carried out by the Chief Executive Officer or such senior officer as he or she may delegate to perform that function.

(9) The terms and conditions of employment of the staff of the Fund shall be as may be directed by the Board.

## **PART V**

### ***Powers, functions and duties of Fund (s 16)***

#### **16. Powers of Fund**

(1) Subject to the provisions of this Act, the Fund shall be responsible for the formulation of the policy and management of the financial and administrative affairs concerning the Fund.

(2) Without derogation from the generality of the powers conferred by sections 4, 5, and subsection (1) the Fund shall have the power to –

- (a) utilise its funds for the purposes connected with or resulting from the exercise of its powers or the performance of the Fund's duties under this Act, including the setting up of appropriate reserves for funding relevant endeavours for the said purposes;
- (b) purchase or otherwise acquire goods, equipment, land, buildings, shares, debentures, stocks, securities and any other kinds or classes of movable or immovable property;
- (c) draw, draft, accept, endorse, discount, sign and issue promissory notes, bills and other negotiable or transferable instruments;
- (d) sell, lease, mortgage, encumber, dispose of, exchange, work, develop, build upon, improve or in any other way deal with property;
- (e) invest any monies, not immediately required for the conduct of its business, in such manner as may be for the benefit of the Fund, and to realise, alter, reinvest such investment or otherwise deal with such monies or investments as may be to the benefit of the Fund;
- (f) borrow or lend money and secure repayment thereof in such manner as it considers necessary or advisable;
- (g) make such donations as it considers appropriate in connection with any matter relating to promotion of road safety;
- (h) reimburse the Government for services rendered to the Fund by persons in the employ of service of the Government;
- (i) negotiate agreements in terms of which it may accept liability in respect of vehicle accidents involving vehicles registered or licensed in a territory other than Botswana; and

- (j) do all such things as are incidental or conducive to the exercise of the Fund's powers or the performance of the Fund's duties under this Act.

(3) The Fund may impose civil penalties on any person liable for failing to comply with the provisions of section 17.

(4) A civil penalty imposed as provided in subsection (3) is recoverable as a fine imposed by a court under section 303 (1) to (4) (inclusive) of the Criminal Procedure and Evidence Act, and an affidavit sworn by a member of the Board or an authorised employee of the Fund is sufficient proof of the lawful imposition of the monetary penalty to enable a court to issue a warrant under that section.

(5) The Board may, in consultation with the Minister in writing, and having due regard to principles of corporate governance, delegate any of the powers and functions of the Fund to the Chief Executive Officer or any other officer of the Fund.

(6) The Board may appoint committees and subcommittees to consider such matters or to perform such duties as it may direct.

(7) Every committee and subcommittee appointed under this section shall consist of the members of the Board and such other persons as the Board, or the committee or subcommittee concerned, with the approval of the Board, may co-opt.

## **PART VI**

### ***Financial provisions (ss 17-19)***

#### **17. Monies of the Fund**

(1) The monies of the Fund shall consist of such sums as—

- (a) shall be raised and paid into the Fund in terms of subsection (2) hereof;
- (b) may be paid into the Fund by the Government;
- (c) the Fund may receive from its investments; and
- (d) the Fund may acquire, or earn or borrow in accordance with the provisions of this Act.

(2) The Minister shall, by regulations, prescribe the amount of levy to be retained by the seller on every litre of petroleum product sold by such seller, or by the importer on every litre of petroleum product imported by such importer other than for resale, such levy to be paid over to the Fund by the 25th day of the month following the date of sale or importation, as the case may be:

Provided that the Minister may exempt, or partially exempt, from such levy, petroleum products purchased for consumption by such organisation, persons or classes of vehicles as he or she may prescribe, and such regulations may prescribe the rate at which, the manner in which, and the period of time within which any rebate in respect of such exemption or partial exemption shall be claimable.

(3) In this section—

**"seller"** means the organisation, person or body of persons involved in the importation or sale of petroleum products; and

**"petroleum products"** means petrol and diesel fuels.

(4) The seller shall, at its own expense, cause its books to be examined biannually by an auditor who shall be a person duly qualified as such in terms of section 194 of the Companies Act, which auditor shall then issue a certificate that such examination has been performed and that, on the evidence presented in the seller's books of account, the payments made accord with the rate prescribed.

(5) The seller shall furnish the Fund with such certificate within seven working days of the audit being completed.

(6) Every seller who contravenes the provisions of subsection (4) or (5) shall be liable to a civil penalty not exceeding P10,000.

(7) Where the seller fails to comply with the provisions of subsection (4) or (5), the Fund shall carry out the audit of the seller's books and secure the audit certificate at the seller's expense, which expense shall be paid by the seller immediately upon the delivery of the audit

certificate to the seller.

(8) The format for the audit shall be as prescribed by regulations.

(9) Where monies are due in terms of subsection (2), but have not been paid into the Fund within the period of time stipulated therein, interest at three per cent per month or part thereof shall accrue thereon and shall become immediately payable to the Fund.

(10) Every person who is not resident in Botswana who drives a motor vehicle into Botswana shall pay, to the Fund, in such manner as may be prescribed, such motor vehicle third party cover as may be prescribed.

(11) Every person who contravenes the provisions of subsection (10) or makes any false representation in relation to any matter in respect of such levy shall be liable to a civil penalty not exceeding P5,000.

#### **18. Accounts and audit**

(1) The Board shall cause to be kept proper books of account and records of all financial transactions, assets and liabilities of the Fund in respect of each financial year.

(2) The accounts of the Fund in respect of each financial year shall, within three months or such extended period after the end thereof as the Minister may direct, be audited annually by an independent auditor appointed for that purpose by the Board.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which he or she considers it pertinent to comment, whether or not—

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

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion thereof, be forwarded to the Fund by the auditor.

#### **19. Annual report**

(1) The Fund shall, within six months of the financial year, or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive report on its operations during such year, together with the auditors' report and the audited accounts as provided for in section 18.

(2) The Minister shall lay, before the National Assembly, a copy of the report submitted to him or her in terms of subsection (1), within three months of its receipt by him or her, or, if the National Assembly is not then in session, as soon as possible after the commencement of the next session.

### **PART VII**

#### ***Liability of Fund (ss 20-31)***

#### **20. Liability of Fund**

(1) A claimant who has suffered loss as a result of injury to himself or herself, or as a result of the death or injury of any person, in either case caused by or arising out of the driving of a motor vehicle by any person, including the person who has suffered the said loss, shall, subject to the conditions, limitations and exclusions imposed by this Act, be entitled to claim the benefits prescribed by this Act from the Fund.

(2) Subject to the conditions, limitations and exclusions imposed by this Act, the benefits to be provided by the Fund shall be confined to a monetary award comprising one or more of the following—

- (a) the payment of income lost as a result of inability to work on account of injuries sustained in an accident, limited to such amount as may be prescribed, which sum



- shall be payable by instalments where the benefit is to pay for future income loss;
  - (b) the payment of financial support lost by dependants as a result of the death of a person caused by an accident;
  - (c) where the benefit paid is to pay for future loss of financial support under paragraph (b), such benefit shall be payable by such instalments, and be limited to such amount, as may be prescribed;
  - (d) such assistance as may be necessary to enhance the quality of the post accident life of a claimant, which assistance shall be as determined by a health practitioner;
  - (e) the payment of the cost of treatment rendered by any health practitioner, including consultation, treatment and hospitalisation costs;
  - (f) medical treatment or management by any health practitioner, including consultation and hospitalisation;
  - (g) rehabilitation by any health practitioner, including consultation, treatment and hospitalisation;
  - (h) payment of incidental expenses which shall include accommodation, transport and subsistence costs incurred or to be incurred during the treatment or rehabilitation of the claimant;
  - (i) payment of funeral expenses; and
  - (j) such other benefits as the Minister may, in consultation with the Board, prescribe.
- (3) Where medical treatment, management or rehabilitation is provided as an award—
- (a) it must be carried out on such terms and conditions as may be stipulated by the Fund in the award;
  - (b) where a claimant accepts such medical treatment, medical management or rehabilitation but requires reasonable changes thereto in terms of advice by a health practitioner then the Fund shall accordingly vary the offer of benefits even if it involves further expense.

(4) Where a claimant is entitled to benefits in terms of this section, and has incurred costs in respect of accommodation for himself or herself the injured or deceased party in a hospital, or has incurred the costs of treatment, the rendering of a service, or goods supplied, the person providing such accommodation, treatment, service or goods may claim the amount due therefor directly from the Fund on such form as may be prescribed, and any such claim shall be subject to the provisions applicable to any claim in terms of this Act.

## **21. Trusts**

(1) All monies set aside by the Fund for the payment of future benefits as set out in subsection (3) shall be held in trust by the Fund in an interest bearing account or shall be otherwise invested until such monies are required for any purpose set out in this section.

(2) A balance that remains from the money forming part of the trust shall accrue and revert to the Fund together with any interest thereon where the trust is for—

- (a) a future medical intervention and the beneficiary medically no longer requires the same undertaking or dies before utilising it; or
- (b) loss of income or loss of support and the beneficiary dies before the end of the projected period of loss.

(3) Where a claim for benefits under this Act—

- (a) includes a claim, in relation to an injured party, for the costs of —
  - (i) any future operation;
  - (ii) care;
  - (iii) treatment;
  - (iv) accommodation in a hospital; or
  - (v) the rendering of a service or the costs of goods to be supplied, the Fund shall furnish the claimant concerned with a written undertaking to pay for such costs as claimed, proved or agreed prior to such undertaking, and shall directly pay the



assisting health practitioner after they have been incurred, and upon proof thereof or reimburse the claimant after they have been incurred, and upon proof thereof;  
or

- (b) includes a claim for future loss of support projected over the anticipated period of loss, the Fund shall furnish the claimant concerned with a written undertaking to pay such amount as claimed, proved or agreed prior to such undertaking and shall thereafter pay the amount due in respect thereof by instalments payable monthly or yearly (whichever is more convenient for administration by the Fund) in accordance with such projection.

(4) Any person who, being a guardian, curator or caretaker, receives any monies on behalf of a claimant who has suffered loss in accordance with the provisions of section 20, commits an offence, if he or she fraudulently misapplies such monies for purposes other than those intended by this Act.

(5) Any person who contravenes the provisions of this section or who commits an offence under subsection (4) shall –

- (a) be guilty of an offence and liable to a fine not exceeding P10,000 or to imprisonment for a term not exceeding seven years, or to both;
- (b) reimburse the beneficiary all monies misused by him or her; and
- (c) be divested of his or her control over such trust funds.

## **22. Limitations of liability**

(1) Notwithstanding the provisions of this Act, the total benefits payable by the Fund shall be limited–

- (a) in respect of a claim by any one injured party, to such sum as may be prescribed by regulations; and
- (b) in respect of a claim by any dependant of a person killed in a vehicle accident, to such sum as may be prescribed by regulations.

(2) Where the person injured is a minor below the age of seven, the limitations and exclusions pertaining to capacity or culpability shall not apply:

Provided that in the case of minors between the ages of seven and 14 years, the common law rules as to capacity or culpability shall apply.

(3) The medical and rehabilitation benefits shall only be payable upon production of a report from a qualified medical practitioner or other relevant expert indicating the requirement for medical treatment or rehabilitation.

(4) The benefits for loss of income otherwise payable by the Fund in respect of the driver of a vehicle involved in a vehicle accident shall be reduced by 50 per cent where it is proved that the blood alcohol level of such driver exceeded the limit prescribed in the Road Traffic Act.

(5) The benefits for loss of income otherwise payable by the Fund shall be reduced by 50 per cent where it is proved that the driver of a vehicle involved in a vehicle accident was under the influence of intoxicating liquor or drugs to the extent of being incapable of having proper control of such vehicle, in respect of any loss to such driver, or in respect of any loss to any passenger of such vehicle, where such passenger, was aware of, the condition of the driver.

(6) The benefits for loss of income otherwise payable by the Fund in respect of a person injured or killed in a vehicle accident shall be reduced by 25 per cent, where such person was–

- (a) at the time of the accident, not utilising a seat belt fitted to the vehicle;
- (b) not seated in or on a seat specifically designed for, and affixed permanently to, the vehicle; or
- (c) at the time of the accident, riding or being conveyed on a motor cycle and not wearing a safety helmet.

(7) Subsection (6) shall not apply where there is proof that–

- (a) the vehicle was not fitted with a seat belt and that the person injured had no alternative means of transport;

- (b) the vehicle was not fitted with a seat designed specifically for it, or that the seat in which the person injured was seated was not permanently affixed to the vehicle and the person injured had no alternative means of transport; or
- (c) the person injured was riding or being conveyed on a motor cycle on account of the fact that that person had no alternative means of transport, and that there was no helmet available for his or her use at the time in question.

(8) The benefits for loss of income payable by the Fund to the driver of a vehicle involved in a vehicle accident, shall be reduced by 50 per cent where the said driver was in unlawful possession or use of the vehicle, or where the vehicle was defective irrespective of whether or not such possession, use or defect contributed to the cause of the vehicle accident in question, and the same reduction shall apply to any passenger, in the vehicle, if it is proved that he or she knew of such unlawful possession or such defect or unlawful use.

(9) The benefits payable by the Fund in respect of medical expenses shall not exceed such sum, or sums, as may be prescribed or generally chargeable in terms of an accepted formal or informal tariff used in the medical profession in Botswana or such other country at which treatment or rehabilitation is received.

(10) The benefits for loss of income or loss of support payable by the Fund to any person, including a dependant, in respect of any vehicle accident shall, where such person is entitled to be compensated or paid in terms of any worker's compensation, industrial law, employment contract, monetary benefits or payments under any social security scheme, be limited to such sum as represents the difference, if any, between the amount payable in terms of such entitlement and the amount otherwise payable in terms of this Act:

Provided that notwithstanding the provisions of any other law, where the Fund has paid the claimant such benefit without the necessary deduction the Fund shall be entitled to be reimbursed by such other authority or body, such sums as ought to have been paid to the claimant by such authority or body and where such sums were paid by such authority or body to the claimant the Fund shall be entitled to be reimbursed such sums by the claimant.

(11) The benefits payable by the Fund to any person in respect of any medical expenses or costs shall, where such person is entitled to be compensated or paid in terms of any medical aid scheme or contract or any workman's compensation, industrial law, employment contract, monetary benefits or payments under any social security scheme, be limited to such sum as represents the difference, if any, between the amount payable in terms of such entitlement and the amount otherwise payable in terms of this Act:

Provided that notwithstanding the provisions of any other law, where the Fund has paid the claimant such benefit without the necessary deduction the Fund shall be entitled to be reimbursed by such other authority or body, such sums as ought to have been paid to the claimant by such authority or body and where such sums were paid by such authority or body to the claimant the Fund shall be entitled to be reimbursed such sums by the claimant.

(12) The benefits payable by the Fund in respect of any funeral, including burial, shall be limited to such sum as may be prescribed.

(13) Subject to the limitations and exclusions set out in this Act, every victim of a road traffic accident shall be entitled to be compensated by way of medical attention and rehabilitation, whilst any negligent party, irrespective of their contribution to the accident will similarly be entitled to medical attention and rehabilitative compensation but subject to a limit of P300,000 or such amount as the Minister may by regulations prescribe until stabilisation is achieved, whichever occurs first.

(14) The benefits for loss of income otherwise payable to a negligent party shall be reduced in direct proportion to their contribution to the occurrence of the accident:

Provided that a negligent driver or owner of a vehicle who is the subject of the right of recovery in terms of section 30 shall not be entitled to any benefit for loss of income.

(15) Subject to any limit prescribed, a maximum monthly income of P6,000 shall apply to

computation of loss of support or income.

(16) Where the claimant making a claim for loss of support or income cannot produce adequate proof of the income or lack thereof of the injured or deceased person, then the prevailing national minimum wage, as prescribed under the Employment Act, shall be used to assess the loss of support or income.

(17) Where the person injured or killed in a vehicle accident was a director of a private company or the beneficial owner of any other private enterprise, a tax certificate authenticated by the relevant tax authority shall be submitted to the Fund by the claimant, and if he or she fails to do so, subsection (16) shall apply.

(18) The limitations specified in this Act shall be exclusive of the costs incurred by the Fund associated with the making of the award of benefits.

### **23. Exclusions of liability**

(1) Notwithstanding the provisions of sections 20 and 21 and of any other law, the Fund shall not be obliged to pay any benefits—

- (a) to any person, unless the claim has been instituted or prosecuted by such person personally, or on his or her behalf by—
  - (i) a person entitled to practise as an attorney in Botswana,
  - (ii) a person who is in the service of, or is a representative of, the Government of Botswana or a local authority by virtue of his or her office, or
  - (iii) his or her curator or legal guardian;
- (b) in respect of any loss in consequence of shock or other nervous or physical trauma induced in any person by virtue of that person witnessing, hearing of or becoming aware of any vehicle accident;
- (c) in respect of any loss comprising or involving loss of profits, outlay, or investment or comprising expense, including expense involving the recruitment, hiring or replacement of any member of staff or any employee in any company, organisation, enterprise or venture;
- (d) in respect of any claim by a driver of a vehicle, or by a dependant of such driver, in the absence of satisfactory proof that the vehicle accident in question was reported to the police within the period prescribed in the Road Traffic Act for the reporting of vehicle accidents, or was reported in terms of section 25, unless it is proved that the failure to so report was due to incapacity on the part of the driver as a result of the accident;
- (e) where the Fund has reasonable grounds to believe that a claim or the information and particulars concerning the vehicle accident, injury or death giving rise to the claim is false or misleading;
- (f) where the accident occurred in an area whose entry is restricted to the employees of a particular organisation or body even if specific members of the public are on occasion allowed access to such areas in the course of business with or of such organisation or body:
  - Provided that such restricted areas shall include—
  - (i) the confines of, or bordering on the confines of, an aerodrome, airfield or airstrip;
  - (ii) mining areas, including quarries in terms of the Mines, Quarries, Works and Machinery Act;
- (g) in respect of claims, for compensation, arising from a vehicle accident involving an unidentified vehicle, where the claimant fails to prove all the following additional conditions—
  - (i) proof, involving physical evidence, of a collision between the unidentified vehicle and the injured party or the deceased, or the vehicle in which either was travelling or being conveyed at the time of the accident,
  - (ii) proof of reasonable steps taken to identify the vehicle in question, and
  - (iii) proof that the collision in question was reported to the police as soon as was

reasonably possible.

(2) A visitor to Botswana who, whilst in Botswana, suffers loss as a result of personal injury caused by a vehicle accident, shall, subject to the limitations and exclusions, be entitled to only medical and rehabilitation benefits set out in this Act only whilst he or she is in Botswana.

(3) Such visitor shall not be entitled to the benefits for loss of earning and neither shall the dependants of that visitor be entitled to any loss of support benefits under this Act nor shall any claimant be paid any funeral costs for the burial of such visitor.

(4) For the purposes of this section a "visitor" has the meaning assigned to it in the Immigration Act.

#### **24. Claimant's other rights reserved**

An award of compensation to any person in terms of this Act shall be without prejudice to any other claim which such person may have against any other person arising out of the same occurrence:

Provided that the claim shall first be made against the Fund and any subsequent claim shall not include any compensation already awarded by the Fund.

#### **25. Responsibility to report accidents**

(1) The owner, and the driver if he or she is not the owner, of a vehicle involved in a vehicle accident shall report, in such form as may be prescribed, such vehicle accident to the Fund as soon as is reasonably possible after such accident, and, in any event, within a period of 14 days after such accident, giving full details of the date, time and place, and the vehicles and persons involved:

Provided that where, due to reasonable cause, such as the incapacitation of the owner or driver of the vehicle as a result of the accident, the report of the accident is made subsequent to the 14 days from the date of the accident, the report shall be accepted if made within a reasonable time after the recovery of the owner or driver.

(2) Any owner or driver who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to a fine of P500 or, to imprisonment for a term not exceeding 30 days or to both.

#### **26. Procedure for making claims**

(1) A claim for compensation against the Fund shall be made in such form as may be prescribed and shall include all duly completed medical reports and such other relevant information and particulars concerning the vehicle accident, injury or death giving rise to the claim as is required on such form or as may be required in terms of the regulations made under this Act.

(2) Any claim made in terms of subsection (1) shall be delivered by hand or registered post to the offices of the Fund and, where delivery is by hand, the receipt thereof, together with the date of such receipt, shall be duly acknowledged in writing by the person to whom it is delivered.

(3) At any time after receiving a claim for compensation in terms of subsection (1), the Fund shall be entitled to request the claimant or any other person—

- (a) to submit, at the expense of the Fund, to a medical examination or examinations by medical practitioners appointed by the Fund;
- (b) to answer any questions put by a representative of the Fund on any matter raised as an issue in the claim;
- (c) to provide a written sworn statement on any matter raised as an issue in the claim; and
- (d) to furnish copies of any documents, plans, drawings, photographs or X-ray photographs which the claimant relies on in his or her claim for benefits:

Provided that the request shall constitute a notice of the Fund's intention to invoke any or all of its rights in terms of this section upon the lapse of 45 days from the date of the request.

(4) Where any person, being a claimant, refuses, declines, neglects or fails to cooperate

with the Fund in respect of any of the matters set out in subsection (3), such person shall be deemed to be in breach of this section and the claim shall stand repudiated without prejudice to the claimant's rights to re-lodge the claim, subject to the rules regarding prescription set out in any enactment.

(5) Where the Fund has requested any person, not being the claimant, to furnish it with such information as is set out in subsection (3), and such person refuses, declines, neglects or fails to cooperate with the Fund, such person shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding 30 days or to both.

(6) Any person who wilfully makes a false claim or produces false or misleading information or particulars concerning the vehicle accident, injury or death giving rise to the claim for compensation shall be guilty of an offence and shall be liable to a fine not exceeding P5,000, or to imprisonment for a period not exceeding 12 months, or to both.

## **27. Legal proceedings**

(1) Legal proceedings to enforce any claim under this Act may be instituted in a court of competent jurisdiction upon the expiry of a period of six months after completion of the procedures set out in section 26:

Provided that such proceedings may be instituted at any time after the Fund has made a final determination on the claim subject to the limitations and provisions of section 29.

(2) Where the claimant disputes the offer of benefits awarded by the Fund, any such legal proceedings shall be by way of review, and in such event the claimant shall first submit a written statement to the Fund setting out the reasons for dissatisfaction or complaint to which the Fund shall respond within 14 days.

(3) In all other instances legal proceedings shall be by way of action either for an order directing the Fund to make a determination on the claim, or where the Fund has repudiated liability on the claim, for an order declaring the claimant entitled to benefits and directing the Fund to thereafter award benefits in accordance with the provisions of this Act.

(4) In any legal proceedings the Fund itself, as represented by its servants, shall be entitled to act on its own behalf and to appear in any court and to sue out, serve and receive service of process.

(5) For the purposes of this section and section 29, a final determination shall mean either a notice conveying an offer of settlement by the Fund to the claimant or a notification repudiating liability.

## **28. Order for interest or costs by court**

Where, in accordance with a claim made in terms of this Act, a court makes an order for compensation against the Fund—

- (a) the court shall not make an award of interest payable on any sum due unless payment in satisfaction of the order is not made by the Fund within a period of 14 days after such order; and
- (b) in making an order for costs the court shall take into consideration any written offer in settlement of the claim made by the Fund prior to the issue of the summons, but evidence of such offer shall not be admissible for such purpose until after judgment on the issue of liability.

## **29. Prescription of right to claim**

(1) Notwithstanding the provisions of any other law relating to the prescription of claims, but subject to the provisions of subsections (2) and (3), the right to claim compensation from the Fund shall become prescribed upon the expiration of a period of three years calculated from the date of the vehicle accident giving rise to the claim.

(2) The prescription of a claim under this Act shall not run against any person—

- (a) whilst such person is a minor;
- (b) whilst such person is detained as a patient in terms of the provisions of the Mental Disorders Act or mentally disordered in terms of the said Act; or



- (c) whilst such person is suffering from a mental disability due to the effects of the injuries sustained in the vehicle accident giving rise to the claim:

Provided that in such event the onus to prove such mental disability shall lie with the person alleging it.

(3) Where a claim has been submitted in accordance with the provisions of section 26, the running of prescription shall be suspended for a period of 180 days calculated from the date of dispatch, by the Fund to the claimant, or claimant's agent, of a notification—

- (a) repudiating liability; or
- (b) conveying an offer of settlement:

Provided that the said 180 day period may be extended by mutual agreement between the Fund and the claimant, or his agent, which agreement shall not take effect unless it is reduced to writing.

(4) Where no claim has been submitted to the Fund within the period of three years referred to in subsection (1), or where the claimant's claim has otherwise prescribed, the court may grant the claimant concerned the right to institute an action for the award of compensation in accordance with the provisions of this Act:

Provided that—

- (i) it is satisfied that special circumstances exist as to the reason for the claim having become prescribed;
- (ii) the application is brought not later than three months after the claim became prescribed; and
- (iii) the claimant provides security for costs to the satisfaction of the court.

(5) The right to institute any action granted in terms of subsection (4) shall be exercised within a period of three months from the date on which such right is granted, failing which such right shall lapse.

### **30. Right of recovery**

Notwithstanding the provisions of any other law, where the Fund has paid any sum as compensation in terms of this Act, it shall have the right to recover such sum from the person who caused the vehicle accident giving rise to the claim in question, if at the time of such vehicle accident that person—

- (a) was under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of a vehicle;
- (b) was driving the vehicle recklessly;
- (c) was driving the vehicle without being the holder of a valid driving licence;
- (d) was driving a defective vehicle and such defect caused or contributed to the cause of the vehicle accident;
- (e) was driving a stolen vehicle knowing, or ought to have known, that it was stolen; or
- (f) being the owner, custodian or lawful possessor of the vehicle, permitted the vehicle to be driven in any of the circumstances set out in paragraphs (a), (b), (c) and (d) hereof.

### **31. Evidence and presumptions**

(1) For the purposes of this Act, a vehicle which is propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control or apparent control of the said vehicle or animal.

(2) For the purposes of this Act, a person who has parked a vehicle at any place shall be deemed to be the driver of that vehicle, and if, as a result of gravity the said vehicle moves from that place, that said person shall be deemed to be the driver of the said vehicle whilst it is so moving, and at the place where it comes to rest.

(3) Whenever a vehicle has been parked or left at any place, it shall, for the purposes of this Act, and until the contrary is proved, be presumed that the said vehicle was so parked or left by the owner thereof.

(4) Whenever it is shown that a vehicle involved in a vehicle accident was equipped with



a seat belt it shall be presumed, until the contrary is proved, that such seat belt was in proper and efficient working order.

(5) Whenever it is proved that the blood alcohol level of any person, alive or dead, exceeded such limitation as may be prescribed under the Road Traffic Act or the regulations thereto, it shall be presumed that such person was under the influence of liquor to such an extent as to be incapable of having proper control of a vehicle.

(6) No agreement or undertaking by the Fund to pay compensation or any sum of money in respect of any claim shall be enforceable in any court unless in addition thereto, liability has accrued to the Fund in terms of this Act and there has been no error in computation of the offer.

## **PART VIII**

### ***Miscellaneous Provisions (ss 32-35)***

#### **32. Regulations**

The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and in particular but without prejudice to the generality of the foregoing, may make regulations with respect to any of the following matters—

- (a) anything required by this Act to be prescribed and the manner in which any form so prescribed shall be completed;
- (b) the powers and duties which may be exercised or performed in connection with the administration of this Act by such person or persons as the Minister may designate;
- (c) after consultation with relevant stakeholders, prescribe a tariff of fees to regulate the medical care, accommodation, treatment, goods or services provided in any hospital.

#### **33. Repeal of Cap. 69:02**

The Motor Vehicle Accident Fund Act (hereafter referred to as "the repealed Act") is hereby repealed.

#### **34. Savings**

(1) All subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(2) All rights, obligations, assets and liabilities which have accrued to the Fund in terms of the repealed Act shall, upon this Act coming into force, simultaneously pass and accrue to the Fund and be dealt with in terms thereof.

#### **35. Transitional provisions**

Notwithstanding the repeal effected under section 33, the provisions of this Act shall not apply to vehicle accidents which occurred prior to this Act coming into force, and any claims in respect of such vehicle accidents shall be dealt with in terms of the repealed Act, which shall continue to have force and effect in respect of such claims.

## **CHAPTER 69:03**

### **ROAD TRANSPORT (PERMITS)**

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*Miscellaneous Provisions*

- 26. No right to continuance of benefit
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- 28. Regulations

Schedule - Transport Advisory Boards

Act 40, 1973,  
Act 20, 1975,  
Act 21, 1989.

**An Act to provide for the co-ordination and control of the means of and facilities for road transport by way of permits and for matters incidental thereto and connected therewith.**  
[Date of Commencement: 28th December, 1973]

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

**1. Short title**

This Act may be cited as the Road Transport (Permits) Act.

## 2. Interpretation

In this Act, unless the context otherwise requires-

**"Advisory Board"** means a Transport Advisory Board appointed under section 4;

**"Appeal Tribunal"** means the Appeal Tribunal established under section 21;

**"authorized vehicle"**, in connection with a permit of any class, means a vehicle specified in such permit and authorized for use in accordance with such permit;

**"carriage of goods"** includes the haulage of goods;

**"carriage on own account"** means-

- (a) the delivery or collection by a person in a vehicle owned by him of goods sold, used or let on hire or hire-purchase in the course of and ancillary to a trade or business carried on by him; or
- (b) the delivery or collection by a person in a vehicle owned by him of goods which have been, or are to be, subject to a process or treatment in the course of and ancillary to a trade or business carried on by him;

**"Controller"** means the Road Transport Controller appointed in accordance with section 3;

**"driver"**, in relation to a vehicle, means any person who drives or guides, or is in an actual physical control of, any vehicle, and in relation to a trailer means the driver of the vehicle by which the trailer is drawn;

**"fare"** means the amount paid or payable for a conveyance of a passenger in a public service vehicle, and includes any sum paid or payable in respect of such passenger's luggage;

**"goods"** include goods or burden of any description;

**"goods vehicle"** means a vehicle wholly or primarily constructed or adapted for the carriage of goods of any description in connection with any trade, business or agriculture, but does not include any type or class of vehicle which the Minister may prescribe not to be a goods vehicle for the purposes of this Act;

**"holder"** in relation to a permit, means the person to whom the permit was granted;

**"motor vehicle"** means any vehicle, self-propelled by mechanical or electrical power, but excluding any vehicle running on a specially-prepared way such as a railway or tramway or cables and such other vehicles as the Minister may prescribe not to be motor vehicles for the purposes of this Act;

**"owner"**, in relation to a vehicle, includes the owner, joint owner or part owner thereof, and where a vehicle is the subject of a hire-purchase agreement or hiring agreement, includes the person in possession of that vehicle under that agreement;

**"permit"** means a permit issued under this Act;

**"public service vehicle"** has the meaning assigned to it in the Road Traffic Act;

**"road"** has the meaning assigned to it in the Road Traffic Act;

**"trailer"** has the same meaning as in the Road Traffic Act.

## PART II

### **Transport Controller and Transport Advisory Boards (ss 3-4)3. Transport Controller**

(1) There shall be appointed a Transport Controller who shall be responsible for the administration of this Act and shall perform the duties and functions and exercise the powers conferred upon him by or under this Act.

(2) The Controller may, with the approval of the Minister, delegate to any public officer the power and authority to carry out on his behalf such duties and functions, and to exercise such powers, as he may determine, and at the time of delegating any such duty, function or power, or at any time thereafter, he may give such directions as he may see fit as to the manner in which such duties or functions are to be carried out or such powers exercised.

(3) The Controller shall keep such records, books, registers and other documents as the Minister may require.

(4) All permits issued under this Act shall be under the hand of the Controller or under

the hand of some person to whom the Controller has delegated his power to issue permits.

(5) The Controller shall, for the purpose of hearing and determining applications for permits or the amendment of any term or condition of a permit, hold public sittings in such places and at such times as appear necessary to him, having regard to the provisions of this Act and the interests of the applicants and any objectors:

Provided that no public sitting shall be necessary-

- (i) in respect of an application for or for the renewal of a permit for the carriage of goods on own account;
- (ii) for the issue of BS, TS and short-term permits under the provisions of section 10;
- (iii) on giving 14 days' notice in the *Gazette*, for the renewal of a permit of any class other than a permit for the carriage of goods on own account;
- (iv) on giving 14 days' notice in the *Gazette* of his intention to do so, for the variation or amendment of a permit where the Controller is of the opinion that, having regard to the trivial nature of the variation or amendment, it is not necessary that a public sitting be held.

**4. Transport Advisory Boards** (1) For the purposes of advising the Controller on any application before him there shall be one or more Transport Advisory Boards appointed, constituted and regulated in accordance with the Schedule.

(2) When a public sitting under section 3(5) is being held a Board shall sit with the Controller.

### **PART III** **Permits (ss 5-8)**

#### **5. Permits required**

(1) Subject to subsection (4) no person shall, except under and in accordance with the terms and conditions of a permit-

- (a) use a motor vehicle on a road for the carriage of goods-
  - (i) for hire or reward; or
  - (ii) on his own account in a vehicle the carrying capacity of which exceeds three tonnes;
- (b) for hire or reward use a vehicle to convey any person by means of a motor vehicle; or
- (c) let on hire any vehicle whether for the carriage of goods or passengers.

(2) When a goods vehicle is being used on a road for the carriage of goods, the driver of the vehicle, if it belongs to him, or is in his possession under an agreement for hire or hire-purchase, and, in any other case, the person in whose ownership or possession the vehicle is, shall, for the purposes of this Act, be deemed to be the user of the vehicle.

(3) Where at any time goods are carried in a goods vehicle, being a vehicle which has been let on hire by the person who, at the time of the carriage of the goods, is, within the meaning of this Act, the user of the vehicle, such goods shall be deemed to be carried by that person for hire or reward.

(4) This section shall not apply to-

- (a) the use of a Government vehicle for Government purposes;
- (b) the use of a vehicle for the purpose of funerals;
- (c) the use of a vehicle for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;
- (d) the use of any vehicle equipped and used solely for fire-fighting purposes;
- (e) the use of any vehicle equipped and used solely as an ambulance;
- (f) the carriage of goods in a vehicle which is being used under and in accordance with the terms and conditions of a motor dealer's licence issued under the Road Traffic Act.

(5) The Minister may, by order published in the *Gazette*, exempt any person or class of persons or any motor vehicle or class of motor vehicles, from all or any of the provisions of this Act.

## **6. Classes of permits**

(1) The following classes of permits may be issued under this Act-

- (a) Botswana operations annual permit (in this Act referred to as a BA permit);
- (b) Botswana operations single trip permit (in this Act referred to as a BS permit);
- (c) Transit operations annual permit (in this Act referred to as a TA permit);
- (d) Transit operations single permit (in this Act referred to as a TS permit);
- (e) Passenger transport permit (in this Act referred to as a P permit).

(2) Botswana operations pertain to the movement of goods that originate in or are destined for places in Botswana. This covers internal traffic within Botswana, imports from across borders to places in Botswana and exports from Botswana to places across borders.

(3) Transit operations pertain to the movement of goods that transit Botswana and neither originate from nor are destined for places in the country.

(4) A P permit shall entitle the holder thereof to use the authorized public service vehicle, subject to any conditions attached to the permit, to carry passengers and baggage for hire or reward or on own account.

(5)(a) The Controller may issue BA and BS permits to allow the holders thereof to use the authorized vehicle, subject to any conditions attached to the permit, for the carriage of goods on own account only.

(b) Notwithstanding anything in this Act contained, the Controller may, in case of emergency and subject to such conditions as he thinks fit to impose, authorize the holder of such a permit to use an authorized vehicle for the carriage of goods for any person to whom he lets the vehicle, if the Controller is satisfied that the needs for such person cannot conveniently be met from other sources.

(6) The Controller may issue a BA or BS permit with an endorsement entitling the holder thereof to use the authorized public service vehicle, subject to any conditions attached to the permit, to carry passengers for hire or reward in addition to goods for hire or reward or on own account. The holder will be charged the fees of a BA or BS permit as applicable.

(7) The Controller may issue a TA permit with an endorsement entitling the holder thereof to operate the authorized vehicle, subject to any conditions attached to the permit, additionally for the carriage of goods under a BA permit. The holder will be charged the higher of the fees in existence pertaining to the TA or BA permit.

(8) The Controller may issue any of the above permits with an endorsement which shall entitle the holder thereof to hire out the authorized vehicle for the carriage of goods or passengers, such vehicle to be driven by-

- (a) the hirer;
- (b) a member of the family of the hirer;
- (c) where the hirer is a company, a director of the company;

(9) An E permit shall entitle the holder thereof to hire out the authorized vehicle for the carriage of goods or passengers, such vehicle to be driven by-

- (a) the hirer;
- (b) a member of the family of the hirer;
- (c) where the hirer is a company, a director of the company; or
- (d) an employee of the hirer.

(10) The vehicles authorized to be used under a permit shall be-

- (a) such motor vehicles, being vehicles belonging to the holder of the permit or in his possession under a hire-purchase agreement, as are specified in the permit; and
- (b) trailers from time to time belonging to the holder of the permit or in his possession under a hire-purchase agreement, not exceeding at any time such maximum number as may be specified in the permit.

(11) For the purposes of subsection (10) different types of motor vehicles or different types of trailers, as the case may be, may be distinguished in a permit and a maximum number

may be specified in the permit for vehicles and trailers of each type.

**7. Use of foreign registered vehicles** Where a goods vehicle or public service vehicle not registered in Botswana is found to be in use or operation in Botswana by a police officer in uniform or other person duly authorized in writing by the Controller and such officer or person is not satisfied that the provisions of this Act have been complied with in relation to such vehicle, such officer or person may require the driver or owner of such vehicle to cause such vehicle either-

- (a) to be returned with or without escort, to the point at which the vehicle entered Botswana; or
- (b) to be driven to the nearest point of exit from Botswana, and then to leave Botswana.

**8. Exclusive permits** (1) Notwithstanding any other provision of this Act, the Controller may, with the approval of the Minister, and subject to such conditions as he may think fit to impose, grant to any person an exclusive permit authorizing such person to operate vehicles for the carriage of goods or passengers in such areas, over such routes or between such places and for such period as the Controller may decide, and the provisions of this Act regarding applications for and objections to the grant of a permit shall apply.

(2) Where the Controller intends to grant an exclusive permit under subsection (1), he shall, by notice published in the *Gazette* and in such manner as is, in his opinion, most likely to bring it to the notice of persons concerned, give notice of his intention to grant such permit, and no such permit shall be granted until a period of one month after the date of publication of such notice has elapsed.

#### **PART IV**

##### ***General Provisions with regard to Permits (ss 9-20)***

#### **9. Exemptions from conditions of permit**

In the case of any permit, and notwithstanding that a vehicle is an authorized vehicle, the conditions of the permit shall not apply while the vehicle is being used for any purpose for which it might lawfully be used without the authority of a permit.

#### **10. Duration of permits**

(1) Subject to the provisions of subsections (2) and (3), BA and TA permits shall, unless previously revoked, remain in force for four quarters of the year. Annual permits shall expire on the last day of the fourth quarter following the date of issue, the quarter in which the permit is issued being the first quarter.

(2) With a view to enabling goods vehicles or passenger-carrying vehicles to be used temporarily-

- (a) for the purpose of a seasonal business;
- (b) for the purpose of the execution of a particular piece of work; or
- (c) for any purpose of a limited duration,

a BS, TS or P permit may be granted for one trip or endorsed for a period not exceeding three months, and any permit granted under this subsection or subsection (3) is hereinafter in this Act referred to as a short-term permit.

(3) Without prejudice to the generality of subsection (2), the Controller may grant short-term permits if he is satisfied that the demand for the use of the vehicles to be so authorized is urgent and that the demand does not conflict with the public interest, including the interest or interests of persons requiring, as well as of persons providing, facilities for transport.

(4) The grant of a short-term permit shall not require a public sitting.

(5) No appeal against the grant or refusal of a short-term permit shall lie to the Appeal Tribunal.

(6) Any person aggrieved by the grant or refusal of a short-term permit may appeal to the Minister whose decision shall be final and shall not be questioned in any court.

(7) The fees to be paid for short term permits shall be-



- (a) for a single trip, the fees in force for BS, TS or P permits; or
- (b) for periods of up to 3 months, the BA fees in force for local operations, TS fees in force for single transit operations or P fees in force for passenger operations.

**11. Power to revoke or suspend permit** (1) A permit may be revoked or suspended by the Controller on the ground that there has been a breach of any of the conditions of the permit or that an authorized vehicle to which the permit relates has not been used for a period of three months.

(2) A permit may be revoked or suspended by the Controller on the ground that the owner or driver of an authorized vehicle to which the permit relates has been convicted of an offence under this Act or under the Road Traffic Act in connection with the use of that authorized vehicle.

(3) In any case where a permit is revoked or suspended the Controller shall, if requested by the permit-holder, state in writing the grounds for such revocation or suspension.

(4) The Controller may, instead of revoking or suspending a permit, direct that one or more of the vehicles specified therein shall be removed therefrom, or that the maximum number of vehicles or trailers specified in such permit shall be reduced, and references in this Act to the revocation or suspension of a permit shall include a reference to the giving of a direction under this subsection.

(5) Notwithstanding the provisions of this Part the Minister may, if he is satisfied that it is in the National interest to do so, revoke any permit issued under this Act, either with immediate effect or within such period as he may consider necessary, or may impose any conditions for its continuation as he may consider necessary.

**12. Variation of permits** (1) On the application of the holder of any type of permit, the Controller may direct that an additional vehicle or vehicles or trailer or trailers be specified thereon or that any vehicle or vehicles or trailer or trailers be removed therefrom.

(2) On the application of the holder of any type of permit to vary the route thereon, the Controller shall take such action as may be necessary in the manner prescribed for new applications.

**13. Power to hold enquiries** The Controller may hold such enquiries as he thinks necessary into an applicant's reliability and financial stability, and the facilities at his disposal for carrying out mechanical repairs.

**14. Power to call for further particulars** A person applying for a permit shall, in addition to any particulars which he is required to furnish with his application, give to the Controller any further information he may reasonably require for the discharge of his duties in relation to the application, and, in particular and without prejudice to the generality of the foregoing, shall, if required by the Controller, submit to him such particulars as may be required with respect to any business as a carrier of goods or passengers for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged or proposed to be charged by the applicant and of the wages and conditions and hours of employment of persons employed in connection with the vehicles proposed to be used under the permit.

**15. Applicant to furnish details of vehicle within three months** (1) When an application for any type of permit has been approved by the Controller, the applicant, in any case where at the time of the application he has not yet purchased but intends to purchase a vehicle in respect of which the application was made, shall furnish the prescribed details required of such vehicle within three months after the date of the approval; and if he fails to do so the approval shall lapse and no subsequent application made by the same person for a similar permit shall, except at the discretion of the Controller, be entertained or adjudicated upon by the Controller until a period of six months from the date of such application has expired:

Provided that, where the Controller is satisfied that the period of three months may not be sufficient within which to purchase a vehicle in respect of which an application was made, he may extend such period to not more than 12 months.

(2) The decision of the Controller under this section shall be final and conclusive and no appeal shall lie therefrom to any court.

**16. Applications, if refused, not to be entertained for six months** (1) Notwithstanding anything contained in this Act, where an application made by any person for a permit has been refused, no subsequent application by that person for a similar permit shall, except at the discretion of the Controller, be entertained or adjudicated upon until a period of six months from the date of such application has expired.

(2) The decision of the Controller under this section shall be final and conclusive and no appeal shall lie therefrom to any court.

**17. Conditions of permits**

(1) It shall be a condition of every permit-

- (a) that authorized vehicles be maintained in a fit and serviceable condition; and
- (b) that the provisions of this Act relating to the keeping of records be complied with.

(2) The Controller may attach to a permit of any class all or any of the following conditions-

- (a) a condition that the authorized vehicles shall or shall not be used in a specified area or over specified routes;
- (b) a condition that certain classes or descriptions of goods shall or shall not be carried;
- (c) a condition specifying the charges or the maximum or minimum charges to be made for the carriage of goods;
- (d) a condition specifying the number and type of vehicles or trailers to be used;
- (e) in the case of BA and BS permits, a condition that the authorized vehicles may only be used in a specified district or between specified places.

(3) Subject to the provisions of this Act, the Controller may attach to a P permit such conditions as he may think fit and, in particular, and without prejudice to the generality of the foregoing, he may attach conditions for securing that-

- (a) the fares shall not be unreasonable;
- (b) where desirable in the public interest the fares shall be so fixed as to prevent wasteful competition with alternative forms of transport, if any, along the routes specified in the permit or any part thereof, or in proximity thereto;
- (c) copies of the time-table and fare-table shall be carried on and be available for inspection in vehicles used on the service;
- (d) passengers shall not be taken up or set down except at specified points or shall not be taken up or set down between specified points;
- (e) every fare-paying passenger shall receive a ticket or receipt in respect of the fare paid;
- (f) the safety and convenience of the public shall be safeguarded.

(4) Subject to subsection (1) the Controller may cancel or vary any of the conditions attached to a permit, and may insert additional conditions.

**18. Permits not transferable** No permit of any class shall be transferable except with the written consent of the Controller, and, in the case of an exclusive permit, with the written consent of the Minister, endorsed thereon.

**19. Permit expires on sale or transfer** Where the holder of a permit sells, transfers (except by way of security for any purpose) or otherwise disposes of the vehicle, or of the business in respect of which such permit was issued, such permit shall, unless written consent under section 18 has been endorsed thereon, expire with effect from the date of such sale, transfer or other disposal, and the vendor or transferor, or person who otherwise disposes of such vehicle, shall return such permit to the Controller.

**20. Authorized vehicle not to be changed without permission except in emergency**

Notwithstanding any provision contained in this Act, a permit-holder may, in the event of a breakdown or other unforeseeable emergency in connection with an authorized vehicle, temporarily substitute another vehicle for such authorized vehicle if he cannot in any other way

provide the service authorized under his permit:

Provided that-

- (i) he shall, within 48 hours thereof, report such substitution to a police station;
- (ii) he shall, within 10 days thereof, report such substitution to the Controller in writing; and
- (iii) no such substitution shall last more than 30 days without the consent of the Controller.

## **PART V**

### ***Appeals (s 21)***

**21. Appeals against decision of Controller** (1) Subject to the provisions of sections 10(5) and (6), 15(2) and 16(2), any person who-

- (a) being an applicant for the grant or amendment of a permit, is aggrieved by the decision of the Controller on his application;
- (b) having duly made an objection to any such application, being an objection which the Controller is bound to take into consideration, is aggrieved by the decision of the Controller thereon; or
- (c) being the holder of a permit, is aggrieved by the revocation or suspension thereof, may, within the time and in the manner prescribed for appeal to the Appeal Tribunal; any such appeal shall be accompanied by a cash deposit of P20, which deposit may, in the discretion of the Appeal Tribunal upon the conclusion of the appeal, be refunded to the appellant or be awarded to either party to the appeal as costs or part thereof.

(2) For the purposes of hearing appeals under this section the Minister may appoint an Appeal Tribunal consisting of such persons, not exceeding five, as he may determine:

Provided that, before the Minister makes any appointments to the Appeal Tribunal, every person to be appointed shall be required to declare whether he has any, and if so what, financial interest in any transport undertaking operating in Botswana.

(3) The members of the Appeal Tribunal shall hold office for such term and under such conditions as the Minister may determine.

(4) Except as may be prescribed, the Appeal Tribunal may regulate its own procedure and proceedings as it may think fit.

(5) Three members of the Appeal Tribunal shall form a quorum.

(6) The Appeal Tribunal may, on any appeal, confirm or reverse the decision of the Controller, or make such other order as to the Appeal Tribunal appears necessary and just.

(7) The Appeal Tribunal may summarily reject any appeal which appears to it either to be frivolous or not to disclose sufficient reason for interfering with the decision of the Controller.

(8) A decision of the Appeal Tribunal under this section shall be final and conclusive and shall not be questioned in any court.

## **PART VI**

### ***Offences and Penalties (ss 22-25)***

**22. Forgery, etc., of permits**

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

- (a) forges within the meaning of Division VII of Part II of the Penal Code, or alters or uses or lends to or allows to be used by any other person, a permit, or any document, plate or mark by which the subject of the permit is to be identified as authorized under this Act;
  - (b) makes or has in his possession any document, plate or mark so closely resembling a permit or such document, plate or mark as aforesaid, as to be calculated to deceive; or
  - (c) alters any record to be kept or maintained under this Act,
- shall be guilty of an offence and liable to a fine not exceeding P200 or to imprisonment for a term not exceeding three years, or to both.

(2) Any person who, for the purpose of-

- (a) obtaining the grant of a permit, whether for himself or for any other person;
- (b) preventing the grant or amendment of any permit; or

(c) procuring the insertion of any condition in any permit, knowingly makes any false statement, shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

### **23. Offences**

Any person who uses a vehicle in contravention of any of the provisions of this Act, or, being the owner of such vehicle, permits it to be so used, and any driver or other person in charge of any vehicle in respect of which any class of permit has been granted under this Act who uses such vehicle in contravention of any condition of such permit, or, being the owner of such vehicle, permits it to be so used, shall be guilty of an offence.

**24. Offence to operate vehicle on another's permit** Where any person has been granted a permit in respect of any vehicle under this Act, and transfers such vehicle to any other person by way of security, it shall be an offence, except with the prior written consent of the Controller for such other person to operate such vehicle under such permit.

### **25. Penalties where no special penalty provided**

Any person guilty of an offence under this Act for which no special penalty is provided shall be liable, in the case of a first offence, to a fine not exceeding P100, or in the case of a second and subsequent offence, to a fine not exceeding P200.

## **PART VII**

### ***Miscellaneous Provisions (ss 26-28)***

### **26. No right to continuance of benefit**

(1) It is hereby declared that nothing in this Act is to be construed as conferring on the holder of a permit of any class any right to the continuance of any benefits arising from the provisions of this Act, or from a permit, or from any conditions attached to a permit.

(2) The grant of a permit of any class under this Act shall not relieve the holder thereof from complying with the provisions of any other written law relating to motor vehicles.

### **27. Power to stop and inspect**

(1) A police officer in uniform or any person duly authorized by the Controller in writing may stop any vehicle with a view to ascertaining whether or not the provisions of this Act are being complied with, and may demand for inspection the production of any permit, certificate, document or record which may, under this Act, be required to be carried on such vehicle, and may require the driver or any other person travelling on such vehicle to give such information as such police officer or authorized person may require in order to ascertain whether or not the provisions of this Act are being complied with.

(2) Any person who obstructs a police officer or duly authorized person in the execution of the powers conferred on him by this section or fails to comply with any lawful order given by such police officer or duly authorized person or refuses to give any information when requested to do so shall be guilty of an offence.

### **28. Regulations**

The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and in particular and without prejudice to the generality of the foregoing, may make regulations with respect to any of the following matters-

- (a) the particulars to be furnished for any of the purposes of this Act;
- (b) the procedure on applications for, and the determination of questions in connection with, the grant, variation, suspension and revocation of permits;
- (c) the fees payable in respect of the grant or variation of permits, and the time such payment is to be made;
- (d) the issue of permits, and the issue of duplicates in the case of permits lost or destroyed;
- (e) the means whereby vehicles are to be identified, whether by plates, marks or otherwise, as being authorized for use under this Act;
- (f) the custody of permits, the production, return and cancellation of permits on expiry,

suspension or revocation, and the custody, production and return of documents and plates;  
(g) the notification to the Controller of vehicles which have ceased to be used under a permit,  
and different regulations may be made in respect of different classes or descriptions of vehicles or in respect of the same class or description in different circumstances.

## **SCHEDULE** **TRANSPORT ADVISORY BOARDS**

(s. 4)

### ARRANGEMENT OF PARAGRAPHS

#### PARAGRAPH

1. Appointment of members
2. Membership of a Board
3. Remuneration and allowances
4. Controller not bound to accept advice

#### **1. Appointment of members**

The Minister may, by notice published in the *Gazette*, appoint such number of suitable persons as he considers necessary to serve as members of any Transport Advisory Board and may amend the list of members so appointed.

#### **2. Membership of a Board**

A Board shall consist of such persons, being not less than two in number, as the Minister may in each case determine.

#### **3. Remuneration and allowances**

The members of a Board, other than public officers, shall receive such remuneration and travelling allowances out of public funds as the Minister, after consultation with the Minister for the time being responsible for finance, may prescribe.

**4. Controller not bound to accept advice** The function of a Board shall be to advise the Controller on any application before him, but the Controller shall not be bound to accept such advice. In the event of the Controller declining to accept the advice of a Board he shall record his reasons for so doing.

## **CHAPTER 69:04** **PUBLIC ROADS**

### ARRANGEMENT OF SECTIONS

#### SECTION

1. Short title
2. Establishment of public roads
3. Compensation payable if improved land damaged
4. Ways of necessity
5. Closing and diverting of public roads by Minister
6. Closing and diverting of public roads on application of owner affected
7. Regulations
8. Penalties for unauthorized opening of gates and for damage done to same
9. Width of public roads, what shall be considered public roads
10. Removal of encroachments on public roads
11. Penalties for encroachment on public roads
12. Penalty for damage to public roads
13. Extent of application
14. Ban on sleds, etc., on public roads
15. Offences and penalties
16. Powers of entry
17. Disputes as to compensation or interest or right of claimants

18. Disputes as to legality of entry or taking possession
19. Delay in payment of compensation

Proc. 48, 1907,  
Proc. 50, 1924,  
Cap. 142, 1948,  
Cap. 169, 1959,  
Law 11, 1961,  
HMC Order 1, 1963,  
L.N. 84, 1966,  
Act 60, 1969,  
S.I. 12, 1977.

**An Act to provide for the establishment and proclamation of public roads and ways or roads of necessity for the closing and diversion thereof and for the fencing of lands through which roads may pass.**

[*Date of Commencement: 21st December, 1907*]

## **1. Short title**

This Act may be cited as the Public Roads Act.

## **2. Establishment of public roads**

(1) The Minister may from time to time and at any time establish and declare public roads on, to or over any land situated within Botswana by order published in three successive issues of the *Gazette*.

(2) The order shall define the general course, situation and width of the road or roads included therein either by reference to an existing road or roads, or in the case of a new road by describing in general terms the course thereof.

(3) Any such order may be revoked, altered or varied as the Minister thinks fit.

## **3. Compensation payable if improved land damaged**

If any road established and declared by the Minister under the provisions of this Act passes over any land improved by cultivation, irrigation or otherwise and causes any actual damage thereto, compensation shall be payable to the person or persons suffering such damage, the amount thereof to be determined by the Minister in his sole discretion.

## **4. Ways of necessity**

If at any time it appears to the Minister upon the petition of any adjacent or neighbouring owner or occupier, that such owner or occupier requires a way or road of necessity on to or over any land situated in Botswana the Minister may, by order published in the *Gazette*, grant such way or road of necessity, and determine the direction and width thereof:

Provided that compensation for the right-of-way, and any damage done shall be paid by the person or persons for whose benefit, and upon whose application the said road is made, the amount thereof to be determined by the Minister in his sole discretion.

## **5. Closing and diverting of public roads by Minister**

The Minister may, by order published twice in the *Gazette*, declare that any road or part of any road shall cease to be a public road, and such road or part of a road, as the case may be, shall thereupon cease to be such road accordingly; or declare that any public road shall be diverted or closed at such time as shall be specified in that behalf in any such order, and such road shall thereupon be so diverted or closed, as the case may be, accordingly:

Provided that the right of the public to travel along any public road or part thereof which has ceased to be such road shall continue until such road or part thereof has been diverted or closed.

## **6. Closing and diverting of public roads on application of owner affected**



(1) The owner or owners of any land in Botswana, or any person authorized thereto by any such owner or owners may make application to the Minister to declare that any public road which passes over the property of such owner or owners shall be closed or diverted.

(2) Notice of the intention to apply for the closing or diverting of any public road shall be posted for general information at some conspicuous place outside the office of the District Commissioner of the district in which the property is situated, and published in the *Gazette* once in each month for a period of three months, and once a week during six weeks in some newspaper published within the district, or if there be none such in some newspaper circulating within the district.

(3) Such notice shall in some part thereof clearly describe the road sought to be closed or diverted, and the situation thereof, and shall call upon any person objecting thereto to file his objection in writing at the office of the Minister within one month after the date of latest publication of such notice in the *Gazette*.

(4) The Minister may, after the expiration of such period of one month, by order published in the *Gazette* close or divert such road in the manner provided in section 5 with or without such modification or alterations as he thinks fit or may refuse such application.

## **7. Regulations**

(1) The Minister may, by statutory instrument make regulations-

- (a) prescribing the circumstances and conditions under which fences or other obstructions may encroach on public roads; and
- (b) prohibiting the causing of damage to fences and obstructions lawfully encroaching on public roads.

(2) The regulations may provide for the punishment by means of a fine not exceeding P200, or by imprisonment for a term not exceeding 12 months, or both, of any person guilty of an offence against the regulations.

## **8. Penalties for unauthorized opening of gates and for damage done to same**

(1) Any person, other than the owner or occupier of land over which a public road passes or a person duly authorized by such owner or occupier, who opens or unfastens any swing gate erected on such public road where it passes over such land except for the purpose of then and there passing through the same with or without any vehicle or animals in his care, or of enabling some other person or persons so to pass, or who passes through any such gate, and fails or neglects forthwith after so passing through the same to close and fasten such gate, or cause it to be so closed and fastened shall be guilty of an offence and be liable to a fine not exceeding P10, or in default of payment thereof to imprisonment for any period not exceeding 30 days unless such fine be sooner paid.

(2) Any person who damages or destroys such gate, whether in passing through or otherwise, shall forthwith make the same good, and in case of failure or neglect shall be liable to a fine not exceeding P20, or in default of payment thereof to imprisonment for a term not exceeding two months.

## **9. Width of public roads, what shall be considered public roads**

The Minister may by order published in three successive issues of the *Gazette* specify what shall be the width of every public road within Botswana for the use of wheeled vehicles, and also the width to be allowed on each side of such roads for the purpose of removing stock in cases where such roads are not enclosed; and for the purpose of this Act every road over which a right-of-way exists in favour of some person or persons other than the owner or occupier of the land on which such road is situate, shall be taken to be a public road.

## **10. Removal of encroachments on public roads**

Within a reasonable time after such order has been published in the *Gazette*, the District Commissioner of any district in Botswana shall, if necessary, remove or cause to be removed, all unlawful fences or obstructions which shall in any way encroach upon the roads of which the width has been defined as hereinbefore provided for.

#### **11. Penalties for encroachments on public roads**

Any person who unlawfully erects any fence or raises any obstruction which encroaches upon the width of any road as defined under the provisions of this Act shall be called upon immediately to remove the same, and in case of his neglect to do so such fence or other obstruction shall be removed by the District Commissioner or any person duly authorized by him at the expense of such person.

#### **12. Penalty for damage to public roads**

If any person maliciously destroys or wilfully obstructs or in any way does damage to any public road he shall be guilty of an offence and liable to a fine not exceeding P6 or in default of payment thereof to imprisonment for a term not exceeding 30 days for every such offence, and shall also make full satisfaction for the damage that may have been done thereby.

#### **13. Extent of application**

(1) Sections 14 and 15 shall be of force and effect within those portions of Botswana which are known as the farm Panyane or Ramatlabama's Kuil, the farm Hildavale, the farm Crocodile Pools, the farm Forest Hill, the farm Traquair, the Lobatse Block, the Gaborone Block, the Gaborone State Reserve and the Tati District, excepting such portions thereof as are assigned to or specifically set apart for the occupation of tribesmen.

(2) The Minister may, by order published in the *Gazette* specify other areas within Botswana to which the provisions of sections 14 and 15 shall apply, and the said provisions shall apply accordingly within such areas from the date of the respective orders.

#### **14. Ban on sleds, etc., on public roads**

It shall not be lawful to draw or trail any sledge, timber or other heavy material upon any public road declared in terms of section 2.

#### **15. Offences and penalties**

Any person contravening the provisions of section 14 shall be guilty of an offence and liable to a fine not exceeding P20 or to imprisonment for a term not exceeding two months, or to both.

#### **16. Powers of entry**

The Permanent Secretary or any person generally or specially deputed in writing by him may, for the purpose of investigating and planning the establishment and declaration of public roads-

- (a) enter upon any land with such assistants or servants, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of those duties;
- (b) place or erect any permanent beacon, bench mark, reference mark or trigonometrical station, or any temporary flag, signal or other mark upon such land;
- (c) make use of any natural material upon which no work has been expended and, except within a township, village or settlement, of any water, whether conserved or not, found upon or in such land;
- (d) cut any vegetation growing wild in the vicinity of any such beacon, mark, trigonometrical station, flag or signal, for the purpose of enabling observations to be made thereto or therefrom;
- (e) inspect natural materials on which no work has been expended and remove samples thereof in reasonable quantities for soil survey purposes; and
- (f) enter at all reasonable hours any building or enclosed place:  
Provided that-
  - (i) no person shall enter upon any land or into any building or enclosed place thereon (except with the consent of the owner or occupier thereof) without previously giving such owner or occupier at least seven days' notice of his intention to do so;
  - (ii) reasonable notice of the intention to exercise any of the other powers conferred by this section shall be given to the owner or occupier of the land;
  - (iii) as little damage and inconvenience as possible shall be caused by the exercise of

any of the powers conferred by this section.

**17. Disputes as to compensation or interest or right of claimants**

As soon as conveniently may be after any entry upon land made under section 16 the Minister shall pay compensation for all damage done and for any property or thing taken, used, consumed or removed on or from such land in pursuance of section 16, and in case of dispute as to the interest in or right over any such land, property or thing of any person claiming compensation or as to the amount, if any, to be paid, the Minister or the person claiming compensation may refer such dispute to a Magistrate's Court Grade I or over whose decision shall be subject to an appeal to the High Court:

Provided that if the amount of compensation claimed exceeds the jurisdiction of the said Magistrate's Court the dispute may be referred only to the High Court.

**18. Disputes as to legality of entry or taking possession**

If any person holding or claiming any interest in or right over land entered upon or any property or thing taken possession of in purported pursuance of section 16 disputes the legality of such entry or taking possession, he may apply to the High Court to determine the question.

**19. Delay in payment of compensation**

Any person aggrieved by any delay in the payment of compensation due to him under section 17 may apply to the High Court for the purpose of obtaining prompt payment thereof.

**CHAPTER 70:01**

**BOTSWANA RAILWAYS**

**ARRANGEMENT OF SECTIONS**

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*Preliminary*

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Act 22, 1986,  
S.I. 104, 1987,  
Act 22, 2004.

**An Act to provide for the establishment of an Organization to be known as the Botswana Railways for the provision and operation of railway services and for matters connected therewith or incidental thereto.**

*[Date of Commencement: 1st October, 1987]*

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

**1. Short title**

This Act may be cited as the Botswana Railways Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

**"contiguous railways"** means any railway outside Botswana to which traffic can travel, to and from Botswana, in the same rail vehicle;

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

**"former owners"** means the National Railways of Zimbabwe or the Railways Unitary System Board of Management so far as they relate to assets within the borders of Botswana;

**"Organization"** has the meaning assigned to it under section 3;

**"private siding"** means any line of railway which is connected to, or is contiguous with, Botswana Railways, other than such connections at the national borders, which has been constructed on land not owned or leased by Botswana Railways, for the specific purpose of facilitating rail transport access to premises or works situated on that land;

**"railway jurisdiction"** means any property of the Organization and includes any of the following which belong to the Organization, namely, buildings, offices, premises, warehouses, trains, locomotives, carriages, wagons, railway yards, railway tracks and the adjoining land;

**"railways services"** means the conveyance of passengers, parcels and goods traffic by

rail or road in accordance with the provisions of this Act;

**"senior officer"** means any employee of the Organization who holds a position which is designated as such by the Board.

## **PART II**

### ***Establishment, Constitution and Membership of Organization (ss 3-7)***

#### **3. Establishment of Organization and legal personality**

(1) There is hereby established a commercial enterprise of the Government of Botswana to be known as the Botswana Railways Organization (in this Act referred to as "the Organization").

(2) Notwithstanding any other law to the contrary, all legal proceedings by or against the Organization shall be instituted by or against the Botswana Railways in its own name, and the necessary service of process shall be effected on the general manager of the Organization.

(3) Sections 3 and 6 of the State Proceedings (Civil Actions by or against Government or Public Officers) Act shall not apply to actions by or against Botswana Railways.

#### **4. Composition of Organization**

(1) There is hereby established a Board of Management (hereinafter referred to as "the Board") which shall consist of the following members appointed by the Minister-

- (a) the chairman;
- (b) the general manager of the Organization appointed under section 10, *ex officio*; and
- (c) not less than five or more than nine other persons who in the opinion of the Minister have knowledge and experience likely to contribute to the successful management of the Organization.

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

- (a) he is a Member of the National Assembly;
- (b) he is an employee of the Organization;
- (c) he has been declared insolvent or bankrupt under any law in any country and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or
- (d) he or she has been convicted of an offence involving dishonesty, or commits an act of misconduct which, in the opinion of the Minister, renders him or her unfit to hold office as a member of the Board.

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

(1) Any member of the Board, other than the general manager, may resign from the Board by notice in writing addressed to the Minister.

(2) A member of the Board may be removed from the Board if-

- (a) ceases to hold the office by virtue of which he was appointed;
- (b) becomes of unsound mind;
- (c) is declared insolvent or bankrupt under any law in force in any country;
- (d) suspends payment of his debts or compounds with his creditors;
- (e) is absent from three consecutive meetings of the Board without such reason as appears to the Minister to be sufficient;
- (f) is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
- (g) in the case of a person possessed of professional qualifications, 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 general manager, shall hold office for such period, not exceeding four 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 specify such periods of appointment so 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 three years, and may be re-appointed for any further periods of three years.

(3) The Board shall once in every year elect from among its members (other than the *ex officio* member) a vice-chairman who shall hold office as 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 three months.

(2) The chairman or, in his absence, the vice-chairman may, and shall on the request in writing of not less than two 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 not be less than one-half of the members of the Board:

Provided that the presence of the general manager 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 a casting vote.

(7) Where a member is present at a meeting of the Board or any committee of the Board at which any matter which is the subject of consideration, and in which matter the member is directly or indirectly interested in a private capacity is to be discussed, he or she shall forthwith, after the commencement of the meeting, disclose such interest to the Board or committee of the Board, as the case may be, and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on, any question with respect to the matter.

(8) The general manager shall, unless the Board in any particular instance decides otherwise, be entitled to attend the meetings of the Board and participate in the discussions without a vote.

(9) The Board may, and shall if the Minister thinks fit, request the attendance of any person to act as adviser at any 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.

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



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

- (a) the meetings of the Board;
- (b) the conduct of its business and other operations in carrying out its functions; 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 general manager or any member or senior officer of the Organization generally or specially authorized in that behalf.

### **PART IV**

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

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

(1) The Board shall, with the approval of the Minister, appoint a general manager of the Organization on such terms and conditions as the Board may determine.

(2) No person shall be appointed as the general manager of the Organization unless he is qualified by experience and training and has demonstrated that he is competent to manage the business of the Organization.

(3) The general manager of the Organization 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 and administration of the Organization, and with the control of its employees.

(4) The general manager may resign from office by notice in writing addressed to the Minister, and may be removed from office by the Minister.

(5) The general manager may delegate to any senior officer of the Organization the exercise of any powers which he is authorized to exercise under this Act.

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

(7) The appointment, dismissal and discipline of all persons to or from positions designated by the Organization as held by senior officers shall be made by the Board on consideration of recommendations of the general manager.

(8) The appointment, dismissal and discipline of all other staff shall be made by the general manager or such senior officers as he may delegate to perform this function.

(9) 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.

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

(11) ...

(12) Officers and employees of the Organization may become members of an appropriate trade union.

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

The Board may, by resolution, delegate to any committee of the Organization the exercise of any of the powers which the Organization is authorized by this Act to exercise either generally or in any particular case.

### **PART V**

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

## **12. Functions and powers**

- (1) Subject to subsections (2) and (3), the functions of the Organization shall be to-
- (a) provide efficient and cost effective railway transport over all its railways within the borders of Botswana;
  - (b) generate income from the commercial use of, and exploitation of, any asset, including land or immovable property, owned or vested in the Organization;
  - (c) issue, with the prior approval of the Minister responsible for finance, and notwithstanding the provisions of any written law, any financial instruments of whatever nature including stock, securities, bills, promissory notes, debentures, debenture stock, bonds, annuities and negotiable certificates of deposit;
  - (d) keep a register of issues and transfers of financial instruments issued under this subsection;
  - (e) repurchase its own or other financial instruments; and
  - (f) perform such other activities as may appear to the Organization to be conducive and incidental to, the attainment of all or any of its objectives under this Act or any other law.
- (1A) The following conditions shall apply to financial instruments issued under subsection (1)-
- (a) the provisions of the Companies Act, in respect of debentures, shall not apply to the financial instruments referred to;
  - (b) the financial instruments shall, where applicable, be traded in the same markets in which similar financial instruments issued by the Government or other statutory bodies are being traded; and
  - (c) where applicable, such financial instruments may be listed in the stock exchange in the same manner and subject to the same requirements and procedure as those given to financial instruments issued by the Government or other statutory bodies.
- (2) The Organization shall have no direct responsibility for the maintenance of connections with, or responsibility for providing services to private sidings, other than duties and obligations arising from an agreement entered into with the owner of any such private siding.
- (3) The Organization shall not, without the approval of the Board after consultation with the Minister, construct a new line of railway at any point outside the recognised railway reserve not previously served by the Organization, neither shall it close nor remove any existing line of railway other than a connexion to a private siding.
- (4) The Organization 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, on behalf of the Government, to-
- (a) acquire, maintain, improve and operate the railways at present existing within Botswana or outside Botswana as may be directed by the Government from time to time;
  - (b) acquire, maintain and use any kind of property, right or privilege and dispose of the same by public auction or such other method as the Board may approve, to any person;
  - (c) form one or more companies or acquire shares, for the purpose of restructuring its activities, carrying on business or carrying out any purpose, which it may carry out in terms of this Act;
  - (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 Organization may not sell any of its immovable property 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 losses, damages, risks or liabilities which the Organization may incur;
- (j) purchase or sell any materials and stores used in the performance of its functions; and
- (k) 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 Organization**

(1) The Organization shall have the exclusive privilege of operating railway services in Botswana.

(2) The Board may permit any person to construct a private siding.

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

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

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

With a view to facilitating present or future research or planning the Organization shall keep full and accurate records of all 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. Powers of Minister to give directions**

The Minister may, after consultation with the Board, give to the Organization, 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 public interest, and as are not inconsistent with the legal obligations of the Organization, and the Organization shall give effect to any such direction.

## **PART VI**

### **Finance (ss 17-21)**

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

(1) The Organization shall 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 Organization of services for the conveyance of goods and passengers as to ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable return measured by taking its net operating income as a percentage of the fair value of its fixed assets in operation plus an appropriate allowance for its working capital.

(2) For the purposes of this section "net operating income" means the amount of income remaining after subtracting from total operating revenues all charges which in accordance with generally acceptable accounting principles are chargeable to revenue accounts, including appropriate provisions for depreciation of assets, adequate maintenance, but before deducting interest and other charges on borrowing or taking into account non-operating income expenditure.

(3) 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 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 Organization to the extent to which such repayments exceed the year's provision for depreciation charged to revenue accounts;
- (c) to provide a reasonable proportion of the funds needed for expanding the Organization's activities and improving its services; and
- (d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Organization deems it necessary to establish such reserves.

#### **18. Fixing of tariffs and surplus funds**

(1) The Board shall, with the approval of the Minister, which approval shall not be unreasonably withheld, prescribe the tariffs at which it provides services for the conveyance of goods and passengers so as to ensure that it is able to comply with the provisions of section 17.

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

(3) Notwithstanding the provisions of subsection (1), the Organization may, where special circumstances exist, enter, with any person, into an agreement with any person providing for special tariffs on a commercial basis in respect of that agreement.

(4) Any surplus funds of the Organization shall be invested or otherwise dealt with in accordance with the directives given by the Minister for the time being responsible for finance.

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

(1) In order to enable the Organization 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 Organization 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 Organization**

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

(2) The Minister may, from time to time, by order published in the *Gazette*, designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government or former owners and contracts made by or on behalf of the Government or former owners which are part of; concern or relate to the railways, 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 Organization.

(3) For the purposes of subsection (4) "the 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 the railways, the date of the vesting of such loan agreement in the Organization by virtue of the foregoing provisions of this section.

(4) The Organization shall pay to the Ministry or Department concerned, in such manner and on such date or dates as the Minister may, with the concurrence of the Organization and the Minister for the time being responsible for finance, from time to time specify, any amount expended or advanced by any Ministry or Department on or in connection with the railways

comprising-

- (a) 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 subsection (3) applies;
- (b) all amounts disbursed or to be disbursed by any Ministry or Department in repayment of any other loan raised or to be raised by any Ministry or Department and interest thereon to the extent to which such loan has been or will be applied to the railways which, before the date specified in a designation pursuant to subsection (2), had not been off-set by an amount or amounts credited to the Consolidated Fund for that purpose;
- (c) amounts equal to the outstanding debit balance of any advances made by any Ministry or Department and all costs incurred by that Ministry or Department as a result of making such advances;
- (d) any other amounts paid or to be paid by any Ministry or Department which, before the date specified in a designation pursuant to subsection (2), had not been off-set by an amount or amounts credited to the Consolidated Fund for the purpose.

(5) If, within one month from the date specified by the Minister under subsection (4) for the payment of any amount payable by the Organization to any Ministry or Department under that subsection, the Organization 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 Organization shall keep proper accounts and other records in relation thereto, 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 Organization in a form which shall conform with the best commercial accounting standards applicable to the provision of services.

(2) The accounts of the Organization in respect of each financial year shall, within four 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 Organization have been properly kept;
- (c) the Organization has complied with all the financial provisions of this Act with which it is the duty of the Organization to comply; and
- (d) the statement of accounts prepared by the Organization was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Organization.

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

(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 22-31)**

## **22. Annual report**

(1) The Board shall, within a period of six 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 its operations during such year together with the auditors' 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 Organization shall be deemed to be for public purposes.

### **24. Resettlement measures**

If the operations of the Organization necessitate the 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 authority 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 Organization 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 for all loss or damage sustained by them by reason or in consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application of 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 Organization's future revenue and expenditure, and with such other information relating to its activities and operations, including books of accounts, records, documents and agreements relating to the activities of the Organization.

**26A. Confidentiality** (1) An officer of the Organization, a member of the Board, or an auditor appointed under section 21(2), shall not disclose any confidential information relating to the affairs of the Organization, which he or she acquired during the performance of his or her duties under this Act.

(2) Notwithstanding the provisions of subsection (1), an officer of the Organization, a member of the Board, or an auditor appointed under section 21(2), may disclose information relating to the affairs of the Organization acquired during the performance of his or her duties-

(a) for the purposes of, and within the scope of, his duties under this Act; or

(b) when required to-

(i) by an order of court,

(ii) under any written law, or

(iii) in the investigation of an offence.

(3) Every member of the Board and employee of the Organization shall take and subscribe to an oath of secrecy in such form as the Minister may prescribe.

(4) A person who contravenes subsection (1), shall be guilty of an offence and shall be liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

**26B. Powers of arrest** (1) Any security officer employed by the Organization, may arrest any person who commits an offence under this Act within the railway jurisdiction.

(2) An officer effecting an arrest in terms of subsection (1), shall forthwith deliver the person arrested, or cause that person to be delivered, to the police to be dealt with according to law.

### **27. Power to make bye-laws, etc.**



(1) The Board may make bye-laws or rules for any purpose connected with its powers, functions and duties under this Act and may impose penalties for breach of any such bye-laws or rules.

(2) Such bye-laws or rules shall come into force upon approval by the Minister.

## **28. Protection from personal liability**

No matter or thing done by any member of the Organization or by any officer or employee of the Organization shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of this Act, render such person or any person acting by his direction personally liable to any action, claim or demand whatsoever.

## **29. Power to make regulations**

The Minister may, after consultation with the Board, make regulations providing for any matter which under this Act is to be provided for by regulations or which otherwise relates to the administration of the Organization.

## **30. Transitional provisions**

(1) Unless the contrary intention is indicated by the Board, every member of the staff of the Department of Railways shall be deemed to have been duly appointed 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.

## **31. Application of certain laws**

(1) Any written laws relating to railways shall, to the extent that they are not inconsistent with the provisions of this Act, continue to be in force.

(2) Any powers contained in any written law which were exercisable by any predecessor railway authority or employees of such railway authority shall be exercisable by the Organization and its employees and any reference to any predecessor railway authority in any such written law shall be deemed to be reference to Botswana Railways.

### **CHAPTER 70:02**

### **RAILWAY (ACCIDENT INQUIRY)**

#### **ARRANGEMENT OF SECTIONS**

#### **SECTION**

1. Short title
2. Accidents on railway to be reported
3. Nature of report
4. Minister may order inquiry
5. Procedure of inquiry
6. Default by witnesses
7. Oaths and forms to be used
8. Contempt
9. Expenses of witnesses
10. Inquiry to be public, subject to discretion of administrative officer
11. Powers and duties of administrative officer
12. Administrative officer to report finding
13. Holding of inquiry by person not an administrative officer
14. Inquiry not to affect holding of inquest

Proc. 9, 1940,  
Proc. 1, 1941,  
Cap. 140, 1948,  
Cap. 166, 1959,  
HMC Order 1, 1963,  
S.I. 12, 1977,

**An Act to make provision for the holding of inquiries in cases of accident on the railways.**

[Date of Commencement: 1st March, 1940]

**1. Short title**

This Act may be cited as the Railway (Accident Inquiry) Act.

**2. Accidents on railway to be reported**

When in the course of working a railway in Botswana an accident occurs causing loss of human life or grievous bodily injury to any person or in which a passenger train is concerned, the general manager of the railway shall, without unnecessary delay, send written notice of the accident to the Minister.

**3. Nature of report**

The report shall contain a brief statement of the nature of the accident and of the injuries, if any, caused to any person or persons.

**4. Ministry may order inquiry**

(1) The Minister, if he considers such course advisable, may order an inquiry into the cause of any such accident and may direct an administrative officer or other competent person to investigate the matter with the aid of an assessor or assessors to be appointed by the President.

(2) Such assessor or one at least of such assessors if more than one is appointed, shall be a person who is fully conversant with railway practice and technicalities.

**5. Procedure at inquiry**

For the purpose of making such inquiry an administrative officer may-

- (a) enter and inspect any place or building, works, offices, stock, plant or machinery, the entry or inspection whereof appears to him requisite for such purpose;
- (b) summon and bring before him all such persons as he may think necessary and who are deemed capable of giving information or evidence concerning such accident;
- (c) examine all such persons on oath and reduce that examination to writing; and
- (d) require and enforce the production of all books, papers and documents which he may consider necessary for such purpose.

**6. Default by witnesses**

If any person summoned as a witness fails to attend in pursuance of such summons such person shall, unless some reasonable excuse be proved on oath or affidavit, be liable to be fined by the administrative officer issuing such summons such sum, not exceeding P20, as the administrative officer thinks fit, and the administrative officer may issue a warrant for the apprehension of such person.

**7. Oaths and forms to be used**

The administrative officer presiding at the inquiry shall administer to the persons appearing to give evidence such oaths or other solemn forms as, *mutatis mutandis*, are used in criminal cases, and the forms of summonses and warrants of apprehension shall be, as near as may be, those in use in similar matters in magistrates' courts.

**8. Contempt**

All acts of contempt committed by witnesses or other persons before or in regard to any inquiry shall be dealt with in like manner *mutatis mutandis* as contempt committed by witnesses or other persons before a magistrate's court.

**9. Expenses of witnesses**

All witnesses summoned or attending to give evidence before an administrative officer shall be entitled to receive their expenses as if summoned to give evidence at a criminal trial before a magistrate's court.

#### **10. Inquiry to be public, subject to discretion of administrative officer**

The inquiry shall be conducted openly and the public and the press shall have access to the place where the inquiry is being held:

Provided, however, that the administrative officer may in his discretion exclude the public and the press from the inquiry or any part thereof and may hold such inquiry in such manner and under such conditions as he may think most effectual for ascertaining the causes and circumstances of the accident and for enabling him to make his report.

#### **11. Powers and duties of administrative officer**

If the administrative officer after concluding any inquiry has cause to believe that any crime or offence has been committed in connection with the accident inquired into by any person who can be made amenable to justice, he may cause such person to be summoned or apprehended and, in such case, shall report the matter to the Director of Public Prosecutions in order that criminal proceedings may be instituted should the Director of Public Prosecutions so decide.

#### **12. Administrative officer to report finding**

At the close of the inquiry the administrative officer shall submit a copy of the proceedings and a report in writing to the Minister as to the causes of origin of the accident, and shall state whether in his opinion it was caused by design or was the result of accident or negligence, stating the full particulars of the case and the conclusion at which he has arrived in regard to it.

#### **13. Holding of inquiry by person not an administrative officer**

If any person who is not an administrative officer is appointed to hold an inquiry he shall have all the powers and the duties conferred on an administrative officer under this Act.

#### **14. Inquiry not to affect holding of inquest**

The holding of an inquiry shall not exempt any administrative officer from holding any such inquest as is prescribed by any law providing for the holding of inquests.

### **CHAPTER 70:03 RAILWAY (COMPENSATION FOR LIVESTOCK) ARRANGEMENT OF SECTIONS**

#### **SECTION**

1. Short title
2. Interpretation
3. Compensation to be made to owner of stock killed or injured by trains running by daylight
4. Penalty for making claim with intent to defraud
5. Amount of compensation payable
6. Claims cognizable in any competent court of Botswana

Schedule - Maximum Amounts of Compensation Payable

Proc. 20, 1904,  
Cap. 139, 1948,  
Proc. 12, 1953,  
Cap. 165, 1959,  
L.N. 84, 1966,  
Act 5, 1979.

**An Act to make provision as to the compensation of owners of stock killed or injured by trains running on lines of railway.**

*[Date of commencement: 6th August, 1904]*

**1. Short title**

This Act may be cited as the Railway (Compensation for Livestock) Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

"daylight" means the period between sunrise and sunset;

"stock" includes horse, gelding, mare, colt, mule, ass, bull, ox, heifer, tolly, cow, calf, sheep, goat, pig and ostrich;

"undertakers" means any Government, company or body of persons working railways within the limits of Botswana under lawful authority.

**3. Compensation to be made to owner of stock killed or injured by trains running by daylight**

The undertakers of any railway within the limits of Botswana shall pay compensation to the owner of any stock killed or injured by any train running by daylight on any line worked by such undertakers if the part of the line at which such killing or injury takes place is unfenced at that time and if no compensation has been paid to any person by such undertakers for or in respect of the right to construct such part of such line:

Provided that no person shall be entitled to recover any sum of money under this Act for the killing or injuring of any stock who fails within 48 hours after such stock has been killed or injured to give notice to the nearest station-master of the killing or injury thereof and of the number and kind of stock so killed or injured in respect of which compensation is claimed:

Provided also that the carcasses or remains of all stock killed and all injured stock in respect of which any claim is made under this Act shall be diligently and to the best of his ability kept and preserved by the owner making such claim for a period of not less than three full days from the time when such killing or injury took place and shall be shown to any person appointed for the purpose of ascertaining the value of the stock so killed or injured.

**4. Penalty for making claim with intent to defraud**

Any person who fails to keep and preserve such carcass or remains of killed stock or such injured stock as aforesaid or who makes any claim for compensation under this Act which any court of competent jurisdiction finds to be either fraudulent or grossly excessive shall not be entitled to any of the benefits of this Act and any person who makes any such claim with intent to defraud shall be guilty of an offence and liable to all the penalties of the crime of fraud.

**5. Amount of compensation payable**

(1) The amount of compensation payable under this Act shall in no case exceed the rates set out in the Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Schedule.

**6. Claims cognizable in any competent court of Botswana**

Claims for compensation for stock under the provisions of this Act shall be cognizable in any competent court of Botswana within the jurisdiction of which court such stock has been killed or injured notwithstanding that the train by which the stock was killed or injured belongs to an undertaker not domiciled within Botswana, and for the purpose of such action service upon any station-master of the undertakers resident within the limits of such court shall be deemed sufficient service on the undertakers.

**SCHEDULE**  
**MAXIMUM AMOUNTS OF COMPENSATION PAYABLE**

(s. 5)

For any bull .....	P200
For any ox .....	P150
For any tolly or heifer .....	P100
For any cow .....	P100
For any calf .....	P50
For any horse .....	P150

For any mule .....	P50
For any ass .....	P15
For any sheep .....	P15
For any goat .....	P15
For any pig .....	P25

## CHAPTER 71:01 CIVIL AVIATION

### ARRANGEMENT OF SECTIONS

#### SECTION

1. Short title
2. Interpretation
3. Powers of Minister
4. Declaration of land subject to control
5. Emergency powers
6. Dangerous flying, etc.
7. General control of buildings
8. Control of buildings near aerodromes
9. Closure of roads, etc.
10. Trespass by aircraft
11. Trespass on aerodromes
12. Action for nuisance
13. Aircraft and spares not liable to seizure
14. Carriage of mail in aircraft
15. Offences on Botswana aircraft
16. Regulations

Act 15, 1975,  
Act 7, 1977,  
S.I. 85, 1977,  
Act 14, 2005.

**An Act to make provision for the control, regulation and orderly development of civil aviation and air services within Botswana and for matters incidental thereto and connected therewith.**

*[Date of Commencement: 1st July, 1977]*

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

This Act may be cited as the Civil Aviation Act.

#### **2. Interpretation**

In this Act, unless the context otherwise requires-

**"aerodrome"** means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft;

**"air transport service"** means a service for the carriage by air of passengers, mail or other freight;

**"Botswana aircraft"** means an aircraft registered in Botswana in pursuance of regulations made under this Act;

**"Chicago Convention"** means the Convention on International Civil Aviation concluded at Chicago on 7th December, 1944;

**"Director"** means the Director of Civil Aviation;

**"foreign aircraft"** means any aircraft other than a Botswana aircraft;

**"land"** includes any estate or interest in land or an easement.

### **3. Powers of Minister**

For the purposes of this Act the Minister may-

- (a) establish and maintain aerodromes;
- (b) provide and maintain, in connection with aerodromes established by him, roads, approaches, apparatus, equipment and buildings and other accommodation;
- (c) provide and maintain facilities and equipment for the purpose of promoting the safety of air navigation including, but without prejudice to the generality of the foregoing, visual and non-visual navigation aids, visual and non-visual approach and landing aids, communications services, meteorological services and air traffic control services;
- (d) alter, abolish, remove or add to any aerodrome, road, approach, apparatus, equipment, building, accommodation or facilities established or provided by him;
- (e) vary the character of any facilities provided by him for the purpose of promoting the safety of air navigation, or of the signals or assistance given thereby;
- (f) determine the conditions of use of any aerodrome and determine whether any such aerodrome shall be open to public use;
- (g) determine the conditions of use of any facilities or equipment provided by him for the purpose of promoting the safety of air navigation;
- (h) after consultation with the Minister for the time being responsible for land matters, grant leases or licences in respect of land or buildings within an aerodrome established by him.

### **4. Declaration of land subject to control**

(1) The Minister may, if he is satisfied that it is necessary to do so in the interests of safety and the efficient operation of aviation, by order published in the *Gazette*, declare any area of land specified in the order to be subject to control for the purposes of this Act.

(2) Where the Minister makes an order under subsection (1) he may in the same or a subsequent order make such provision as he considers necessary or expedient for the purposes of the order, and without prejudice to the generality of the foregoing, such provision may include provision for the following-

- (a) for prohibiting or restricting building in such area;
- (b) for restricting the height of buildings or structures or for requiring the total or partial demolition of any building or structure within such area;
- (c) for restricting the height of trees and other vegetation upon any land within the area, or for requiring any trees or other vegetation upon any such land to be cut down or reduced in height;
- (d) for extinguishing any private right of way over land within the area;
- (e) for restricting the installation of cables, mains, pipes, wires or other apparatus over, on or under any land within the area;
- (f) for extinguishing, at the expiry of such period as may be specified, any subsisting right of installing or maintaining any such apparatus as aforesaid over, on or under any land within the area;
- (g) for requiring that, before the expiry of such period as may be specified, any such apparatus shall be removed from land within the area;
- (h) for restricting or preventing the discharge of storm or other water from any drain, pipe or contour ridge constructed on any land within the area;
- (i) the giving of directions by the Minister in any special case;
- (j) the uses to which land in such area may or may not be put; and
- (k) prescribing of offences and penalties, not exceeding a fine of P500 or imprisonment for a term not exceeding six months, or to both, in respect of the contravention of any of the provisions of such order.

(3) An order under this section may contain provision for empowering any person authorized in that behalf by the Minister to move or alter, so as to bring it into conformity with the



requirements of the order or any directions given thereunder, any building, structure, vegetation or apparatus which contravenes those requirements, and for the recovery of the expenses thereof.

(4) Where the Minister makes or has under consideration the making of an order under this section in respect of any land, any person authorized in that behalf in writing by the Minister may at all reasonable times, on producing evidence of his authority, if demanded, enter upon any of the land in order to make any survey which the Minister requires to be made for the purposes of any steps to be taken in consequence of the order or, as the case may be, for the purpose of determining whether the order should be made:

Provided that admission shall not, by virtue of this subsection, be demanded as of right to any land which is occupied unless 24 hours' notice in writing of the intended entry has been served on the occupier.

(5) Any person who obstructs any other person in the exercise of any powers conferred upon that other person by virtue of subsection (3) or (4) shall be guilty of an offence and liable to a fine not exceeding P150 or to imprisonment for a term not exceeding six months, or to both.

(6) Any person who incurs expense or suffers damage by reason of the operation of this section shall be entitled to receive from the Government adequate compensation in respect of the expense or damage, the amount thereof to be fixed, in default of agreement, by an arbitrator in accordance with the Arbitration Act:

Provided that no compensation shall be payable in respect of any building or structure erected in contravention of a prohibition or restriction on such erection.

(7) The powers of the Minister under this section shall not be construed as prejudicing his power to acquire land for the purpose of securing the observation of any requirement which might have been imposed under this section in relation to the land.

## **5. Emergency powers**

(1) In time of actual or imminent war or of national emergency, the Minister may by order regulate or prohibit, either absolutely or subject to such conditions as may be contained in the order, the navigation of all or any descriptions of aircraft over Botswana or any portion thereof; and may by order provide for taking possession of and using for the purposes of the military forces of Botswana any aerodrome, or any aircraft, machinery, plant, material or things found therein or thereon, and for regulating or prohibiting the use, erection, building, maintenance or establishment of any aerodrome, or flying school of any class or description.

(2) If any person contravenes or fails to comply with any provision of an order made under this section, he shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding 12 months, or to both.

(3) Any person who suffers direct injury or loss owing to the operation of an order made under this section shall be entitled to receive adequate compensation from the Government, the amount thereof to be fixed, in default of agreement, by an arbitrator in accordance with the Arbitration Act:

Provided that no compensation shall be payable by reason of the operation of a general order under this section prohibiting flying in Botswana or any part thereof.

## **6. Dangerous flying, etc.**

(1) Where an aircraft is flown in such a manner as to cause danger to any person or property on land or water, or in contravention of any regulations made under this Act, the pilot or other person in charge of the aircraft and the owner of the aircraft shall be guilty of an offence and liable for a first offence to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both, and for a second or subsequent offence to a fine not exceeding P5 000 or to imprisonment for a term not exceeding two years, or to both.

(2) In any proceedings against the owner of an aircraft in respect of an offence under this section, it shall be a defence to prove that the act constituting the offence was done without the knowledge or consent of the owner.

(3) In this section, "owner", in relation to an aircraft and an offence, includes any person by whom the aircraft is hired at the time the offence was committed.

#### **7. General control of buildings**

(1) Subject to the provisions of the preceding sections, any person who proposes to erect any building or other structure of an overall height which exceeds by more than 15 m the height of any obstacle including land within a radius of 8 km of an aerodrome, shall notify the Minister in writing of such intention and such notice shall contain the precise position and height of such proposed building or other structure, and if any person to whom this subsection applies fails to give such notice or wilfully makes any false statement therein, shall be guilty of an offence and liable to a fine not exceeding P500.

(2) Within three months of receipt of a notice under subsection (1) the Minister may, in writing, require the owner or other person responsible for the erection of such building or other structure to light or otherwise mark the same in such manner as the Minister may direct.

#### **8. Control of buildings near aerodromes**

(1) If the Minister is satisfied with respect to any building, structure or erection in the vicinity of an aerodrome to which this section applies, that in order to avoid danger to aircraft flying in that vicinity in darkness or conditions of poor visibility, provision ought to be made (whether by lighting or otherwise) for giving to such aircraft warning of the presence of that building, structure or erection, he may direct (subject to any conditions specified) the proprietor of the aerodrome, and any person acting under the proprietor's instructions-

- (a) to execute, install, maintain, operate, and as occasion requires to repair and alter, such works and apparatus as may be necessary for enabling such warning to be given in the manner specified; and
- (b) as far as may be necessary to enter upon and pass over (with or without vehicles) any such land as may be specified:

Provided that no such direction shall be given in relation to any building, structure or erection if it appears to the Minister that there have been made, or are being carried out, satisfactory arrangements for the giving of such warning of the presence of the building, structure or erection.

(2) The Minister shall, before giving any such direction, cause to be published, in such manner as he thinks best for informing the persons concerned, notice of the proposal to give the direction and of the place where copies of the proposed direction may be obtained free of charge, and take into consideration any representations with respect to the direction which may, within such period not being less than two months after the publication of the notice as may be specified therein, be made to him by any person appearing to him to have an interest in any land which would be affected by the direction; and at the end of that period the direction may, subject to the provisions of this section, be made with such modifications (if any) of the original proposal as the Minister thinks proper.

(3) Every direction shall provide-

- (a) that, except in a case of emergency, no works shall be executed on any land in pursuance of the direction unless, at least 14 days previously, the proprietor of the aerodrome to which the direction relates has served in the manner prescribed by the direction on the occupier of that land, and on every person known by the proprietor to have an interest therein, a written notice containing such particulars of the nature of the proposed works, and the manner in which and the time at which it is proposed to execute them, as may be prescribed by or in accordance with the direction; and
- (b) that if, within 14 days after service of the said notice on any person having such an interest, the proprietor of the aerodrome receives a written intimation of objection on the part of that person to the proposals contained in the notice, being an intimation which specifies the grounds of objection then, unless the objection is withdrawn, no steps shall be taken in pursuance of the notice without the specific sanction of the

Minister,

and shall also provide for requiring the proprietor of the aerodrome to which the order relates to pay to any person having an interest in any land affected by the direction such compensation for any loss or damage which that person may suffer in consequence of the direction as may, in default of agreement, be determined by an arbitrator in accordance with the Arbitration Act and, for the purposes of this subsection, any expense reasonably incurred in connection with the lawful removal of any apparatus installed in pursuance of such a direction, and so much of any expense incurred in connection with the repair, alteration, demolition or removal of any building, structure or erection to which such a direction relates as is attributable to the operation of the direction, shall be deemed to be loss or damage suffered in consequence of the direction.

(4) The ownership of anything shall not be taken to be affected by reason only that it is placed in, or affixed to, any land in pursuance of such a direction; and (subject to the provisions of subsection (6)) so long as any such direction in respect of an aerodrome is in force, no person shall, except with the consent of the proprietor of the aerodrome, wilfully interfere with any works or things which, to the knowledge of that person, are works or things executed or placed in, on or over any land in pursuance of the direction.

(5) If any person contravenes the provisions of subsection (4), he shall be guilty of an offence and liable to a fine not exceeding P150 or to imprisonment for a term not exceeding six months, or to both; and every person who wilfully obstructs a person in the exercise of any of the powers conferred by such a direction shall be liable to a fine not exceeding P75.

(6) Nothing in this section shall operate, in relation to any building, structure or erection, so as to restrict the doing of any work for the purpose of repairing, altering, demolishing or removing the building structure or erection:

Provided that-

- (i) notice of the doing of that work is given as soon as may be to the proprietor of the aerodrome; and
- (ii) the giving of warning of the presence of the building, structure or erection in the manner provided by any order under this section in force in relation thereto is not interrupted.

(7) In this section-

- (a) the expression "aerodrome to which this section applies" means a Government aerodrome or any premises which, by virtue of any regulations made under section 16, are for the time being licensed as an aerodrome for the public use; and
- (b) the expression "proprietor of the aerodrome" means, in relation to any premises used or appropriated for use as an aerodrome, the person carrying on or entitled to carry on the business of an aerodrome in those premises, or, in the case of a Government aerodrome, the officer in charge of the aerodrome.

## **9. Closure of roads, etc.**

(1) The Minister may, if he is satisfied that it is necessary to do so in order to secure the safe and efficient use for purposes of aviation of any aerodrome or any premises approved by him used for the testing of aircraft, by order, authorize the stopping up or diversion of any road.

(2) An order under subsection (1) may provide for all or any of the following matters, that is to say-

- (a) for securing the provision or improvement of any road so far as the Minister thinks such provision or improvement necessary or desirable in consequence of any such stopping up or diversion;
- (b) for the retention or removal of any cables, mains, pipes, wires, or similar apparatus placed along, across, over or under any road stopped up or diverted under the order, and for the extinguishment, modification or preservation of any rights as to the use or maintenance of that apparatus; or
- (c) if any road is to be provided or improved under the order, for authorizing or requiring

the provision of any such apparatus along, across, over or under that road in lieu of any apparatus removed from a road in pursuance of the order, and for conferring rights as to the use or maintenance of apparatus so provided.

(3) An order under subsection (1) may contain such consequential, incidental and supplemental provisions as appear to the Minister to be necessary or expedient for the purposes of the order.

(4) Notice of any order made under subsection (1) shall be-

- (a) displayed in a prominent position at the ends of so much of any road as is proposed to be stopped up or diverted under the order;
- (b) sent to every local authority in whose area any road to be stopped up or diverted under the order or any road to be provided or improved under the order is situate; and
- (c) served upon any water or electricity undertakers having any cables, mains, pipes or wires laid along, across, over or under any road to be stopped up or diverted under the order.

#### **10. Trespass by aircraft**

(1) No action shall lie in respect of trespass or nuisance by reason only of, or of the ordinary incidents of, the flight of an aircraft over any property at a height above the ground which is reasonable having regard to wind, weather and all the circumstances of the case.

(2) Where loss or damage is caused to any person, property, land or water by a person in or an article or person falling from, an aircraft while in flight, taking off or landing, then, without prejudice to the law relating to contributory negligence, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft:

Provided that where loss or damage is caused in circumstances in which-

- (i) damages are recoverable from the owner in respect of the loss or damage by virtue only of the preceding provisions of this subsection; and
- (ii) a legal liability is created in some person other than the owner to pay damages in respect of the loss or damage,

the owner shall be entitled to be indemnified by that other person against any claim in respect of the loss or damage.

(3) Where an aircraft has been genuinely demised or hired out for any period exceeding 14 days to any other person by the owner of the aircraft and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employ of the owner, subsection (2) shall have effect as if for references to the owner there were substituted references to the person to whom the aircraft has been demised or hired out.

#### **11. Trespass on aerodromes**

If any person trespasses on any land forming part of a Government aerodrome or a licensed aerodrome he shall be guilty of an offence and liable to a fine not exceeding P50.

#### **12. Action for nuisance**

No action for nuisance shall lie by reason only of the noise and vibration caused by aircraft on an aerodrome so long as the provisions of regulations made under this Act in force in respect of that aerodrome are complied with.

#### **13. Aircraft and spares not liable to seizure**

(1) No aircraft to which this subsection applies, making any lawful entry into Botswana or any lawful transit across Botswana, with or without landings, shall be seized or detained, nor shall any proceedings be taken against the owner or operator of such aircraft, nor shall the aircraft be otherwise interfered with by or on behalf of any person in Botswana, on the ground that the construction, mechanism, parts, accessories or operations of the aircraft is or are an infringement of any patent, design or model.

(2) The importation into and storage in Botswana of spare parts and spare equipment for

an aircraft to which this subsection applies and the use and installation thereof in the repair of such an aircraft shall not entitle any seizure or detention of aircraft or of the spare parts or spare equipment or any proceedings against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Botswana on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model.

(3) Subsections (1) and (2) shall apply-

- (a) to any aircraft registered in a country or territory which is a party to the Chicago Convention; and
- (b) to such other aircraft as the Minister may, by order published in the *Gazette*, specify:

Provided that subsection (2) shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Botswana.

(4) Where it is alleged by any person interested that a foreign aircraft which is not an aircraft to which subsection (1) applies and which is making a passage through or over Botswana infringes in itself or part of it any invention, design or model which is entitled to protection in Botswana, it shall be lawful, subject to and in accordance with rules of court, to detain the aircraft until the owner of it deposits or secures in respect of the alleged infringement a sum (hereinafter in this section referred to as "the deposited sum") and thereupon the aircraft shall not, during the continuance of the passage, be subject to any lien, arrest, detention or prohibition, whether by order of a court or otherwise, on account of the alleged infringement.

(5) The deposited sum shall be such sum as may be agreed between the parties interested or, in default of agreement, as may be fixed by the Minister; and the payment of the deposited sum shall be made or secured to the Minister in such manner as may be approved by him.

(6) The deposited sum shall be dealt with by such tribunal and in accordance with such procedure as may be prescribed by rules of court and such rules may provide generally for carrying the provisions of subsections (4) and (5) into effect.

(7) For the purposes of subsection (4), the expression "owner" includes the actual owner of the aircraft and any person claiming through or under him, and the expression "passage" includes all reasonable landings and stoppages in the course of the passage.

#### **14. Carriage of mail in aircraft**

(1) Mail shall not be carried by any aircraft without the consent in writing of the Director of Postal Services, and any written law relating to the dispatching, conveying and delivering of mail and all incidental services relating thereto shall with such modifications, adaptations and such consequential and supplementary provisions as may be declared by the Minister by order published in the *Gazette* to be expedient and necessary, apply to the dispatching, conveying and delivering of mail by aircraft.

(2) No radiotelegraphic or other system of telegraphic or telephonic communication shall be installed, maintained, or operated in any aircraft or at any aerodrome or landing ground except by the Chief Executive of the Botswana Telecommunications Corporation or under and in accordance with licences or other authorizations in respect of either or both personnel and apparatus granted or recognized by the Chief Executive of Botswana Telecommunications Corporation.

#### **15. Offences on Botswana aircraft**

(1) Any act done by any person on a Botswana aircraft outside Botswana which, if it had been done by him in Botswana, would have constituted an offence shall, for the purposes of any criminal proceedings in Botswana against that person in respect of that act, be deemed to have been done by him in Botswana.

(2) Except with the consent of the Director of Public Prosecutions, no proceedings shall be instituted by virtue of subsection (1) against a person who is not a citizen of Botswana at the time of the act in question.



## **16. Regulations**

(1) The Minister may make regulations for the better carrying out of any of the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the powers of the Minister shall in particular include power to make regulations for the following purposes-

- (a) for giving effect to and carrying out the provisions of the Chicago Convention, any Annex thereto relating to international standards and recommended practices (being an Annex adopted in accordance with the Convention) and any amendment of the Convention or any such Annex made in accordance with the Convention;
- (b) for the registration of aircraft in Botswana;
- (c) for prohibiting aircraft from flying unless certificates of airworthiness issued or validated under the regulations are in force with respect to them and except upon compliance with such conditions as to maintenance and repair as may be prescribed;
- (d) for the licensing, inspection and regulation of aerodromes, for access to aerodromes and places where aircraft have landed, for the inspection of aircraft factories and for prohibiting or regulating the use of aerodromes which are not licensed;
- (e) for prohibiting persons from engaging in, or being employed in or in connection with, air navigation in such capacities as may be prescribed unless they satisfy the prescribed requirements, and for the licensing of persons employed at aerodromes or elsewhere in the inspection, testing and supervision of aircraft;
- (f) as to the conditions under which, and in particular the aerodromes to or from which, aircraft entering or leaving Botswana may fly, and as to the conditions under which aircraft may fly from one part of Botswana to another;
- (g) as to the conditions under which passengers or goods may be carried by air and under which aircraft may be used for other gainful purposes and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- (h) for minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;
- (i) for authorizing persons to extinguish or screen any sign or light liable to endanger aircraft and to enter upon any land for that purpose, and for recovering the expenses of so doing from the owner or occupier of the place where the sign or light is exhibited or from the person having charge of the sign or light;
- (j) generally for securing the safety, efficiency or regularity of air navigation and the safety of aircraft and of persons and property carried in aircraft, and for preventing aircraft endangering other persons and property;
- (k) for requiring persons engaged in, or employed in or in connection with, air navigation to supply meteorological information for the purposes of air navigation;
- (l) for regulating the making of signals and other communications by or to aircraft and persons carried in aircraft;
- (m) for regulating the use of any ensign established by the President for purposes connected with air navigation;
- (n) for prohibiting aircraft from flying over such areas in Botswana as may be specified;
- (o) as to the manner and conditions of the issue, validation, renewal, extension or variation of any certificate, licence or other document required under this Act (including the examination and tests to be undergone), and as to the form, custody, production, cancellation, revocation, suspension, endorsement and surrender of any such document and the conditions that may be attached thereto;
- (p) for securing that aircraft shall not be used in Botswana by any person-
  - (i) while carrying passengers or goods for reward, on such journeys or classes of journeys, whether beginning and ending at the same point or different points, as



- may be prescribed; or
- (ii) for such flying undertaken for the purpose of any trade or business as may be prescribed,
  - except under the authority of and in accordance with a licence or permit granted to him by the Minister;
- (q) for requiring any person who carries on the business of carrying passengers or goods in aircraft for reward, on such journeys or classes of journeys, whether beginning and ending at the same point or at different points, as may be prescribed, to furnish to the prescribed authorities such information relating to the use of aircraft for the purpose of the business, and to the persons employed in connection with that use, as may be prescribed, and specifying the time at which, and the form and manner in which, any information required under the regulations is to be furnished;
- (r) for prohibiting, restricting or regulating the carrying on of any trade or business within any aerodrome which is under the control or in the occupation of the Minister or any department;
- (s) for the granting by the Minister, on such terms and conditions and subject to the payment of such consideration as he thinks fit, of authorities to carry on any trade or business within any such aerodrome;
- (t) for establishing and regulating the conditions of use, including the charges to be made for use, of any such aerodrome;
- (u) for the investigation of accidents arising out of or in the course of air navigation and either occurring in or over Botswana or occurring to Botswana aircraft wherever they may be, and in particular-
  - (i) requiring notice to be given of any such accident in such manner and by such persons as may be prescribed;
  - (ii) applying with or without modifications, for the purpose of investigations held with respect to any such accidents, any of the provisions of any written law relating to the investigation of deaths or accidents;
  - (iii) prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred and authorizing any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with, any such aircraft;
  - (iv) authorizing or requiring the cancellation, suspension, endorsement or surrender of any licence or certificate granted in Botswana in pursuance of this Act or the withdrawal or suspension of any validation conferred in Botswana of a licence granted by a competent authority elsewhere, where it appears on investigation that the licence, certificate or validation ought to be so dealt with, and requiring the production accordingly of any such licence or certificate;
  - (v) enabling a person in charge of an investigation or other inquiry to grant immunity to any person giving evidence in the course of such investigation or inquiry from prosecution for offences disclosed by or arising from such evidence;
  - (vi) providing for the costs of any investigation or inquiry to be paid by any person found on investigation or as a result of an inquiry to be wholly or partly responsible for any accident;
- (v) as to the conditions under which noise and vibration may be caused by aircraft on or over aerodromes or any specified aerodrome;
- (w) for the payment of fees for any matter required or provided for under this Act, and any other matters in respect of which it appears to the Minister expedient or desirable to charge fees;
- (x) as to appeals (if any) to the Minister or references to tribunals or boards of inquiry in respect of any matters provided for under this Act;

- (y) for prohibiting or regulating the emission or causing of smoke in the vicinity of any aerodrome, and for this purpose "smoke" includes soot, ash, grit, gritty particles, dust and any other substance whatsoever which obscures visibility;
- (z) for exempting from any of the provisions of this Act or of any regulations made thereunder any aircraft or persons or classes of aircraft or persons.

(3) Different regulations may be made for different classes of aircraft, for different aerodromes or for different parts of Botswana, but shall as far as is practicable be so framed as not to discriminate in like circumstances against aircraft registered in Botswana and operated for hire or reward.

(4) Regulations under this section may provide for the imposition of penalties for offences against the regulations, not exceeding in the case of any particular offence a fine of P500 or to imprisonment for one year, or both, and may provide for such steps as may be necessary for securing compliance with the regulations, including the seizure and detention of aircraft, and the firing at or shooting down of aircraft flying over areas of Botswana over which flying is prohibited.

(5) No information with respect to any particular undertaking which has been obtained by virtue of regulations made under this section shall, without the consent of the person carrying on that undertaking, be disclosed otherwise than in connection with the execution of the regulations; and if any person discloses any such information in contravention of this subsection he shall be liable to a fine not exceeding P200 or to imprisonment for a term not exceeding six months, or to both.

(6) Nothing in subsection (5) shall apply to the disclosure of any information for the purposes of any legal proceedings which may be taken by virtue of that subsection or of regulations made under this section or for the purposes of any report of such proceedings; but except that that subsection shall, in relation to any legal proceedings, including arbitration, preclude any person who is in possession of any information obtained by virtue of such regulations from disclosing, and from being required by any court or arbitrator to disclose, that information without the consent of the person carrying on the undertaking to which the information relates.

## **CHAPTER 71:02 AVIATION SECURITY**

### **ARRANGEMENT OF SECTIONS**

#### **SECTION**

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- 3. Application

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*National Aviation Security and Facilitation Committee*

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Act 20, 1993,  
Act 14, 2005.

**An Act to provide for the protection of aircraft, aerodromes, air navigation installations and of persons or property on board aircraft, and for matters connected with aviation security.**

[Date of Commencement: 7th April, 1995]

**PART I**

***Preliminary (ss 1-3)***

**1. Short title and commencement**

This Act may be cited as the Aviation Security Act.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires-

**"act of violence"** means any act which, if committed in Botswana, would constitute the offence of assault, murder, attempted murder or manslaughter, or any other act of which violence or the threat thereof is an essential ingredient;

**"aerodrome"** means any area of land or water, including any buildings, installations or equipment, designed, set apart or commonly used for affording facilities for the landing,

departure and surface movement of aircraft;

**"aerodrome security force"** means any person or body hired for security purposes at any aerodrome;

**"aircraft registered or operating in Botswana"** means-

- (a) any aircraft which is registered in Botswana; or
- (b) any aircraft not so registered, which has been allocated for use on flights which include landing at, or taking off from, an aerodrome in Botswana;

**"airside"** means the movement area of an aerodrome, adjacent terrain and buildings, or parts thereof, access to which is controlled;

**"air navigation installation"** means any building, works, apparatus or equipment used wholly or mainly for the purpose of controlling air traffic, or as an aid to air navigation, together with any land contiguous or adjacent to any such building, works, apparatus or equipment used wholly or mainly for any purpose connected therewith;

**"article"** means any substance, whether in the form of a solid, liquid, gas or vapour;

**"authorised person"** means any person authorised by the Director to perform any act, function or duty under section 12;

**"commander"** in relation to an aircraft, means the member of the flight crew designated as the commander of that aircraft by the operator thereof or by the person who is the pilot - in - command of the aircraft;

**"Convention country"** means a country in which the Tokyo, Montreal and Hague Conventions are in force;

**"Director"** means the Director of Civil Aviation;

**"explosive"** means any article which has been manufactured for the purpose of causing an explosion, or which is capable of, or can be used to cause, an explosion;

**"firearm"** includes an airgun and an air pistol;

**"Hague Convention"** means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on the 16th of December, 1970;

**"manager"** in relation to an aerodrome means the person, whether the Department of Civil Aviation, a local authority or other person by whom an aerodrome is managed;

**"military aircraft"** means an aircraft of the naval, military or air force of any country, or any other aircraft which is treated as military aircraft under any enactment in force in Botswana relating to civil aviation;

**"Montreal Convention"** means the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed at Montreal on the 23rd of September, 1971;

**"operator"** means any person, organization or enterprise engaged in the operation of any aircraft;

**"pilot-in-command"** means the person in charge of piloting an aircraft and is not under the direction of another pilot on that aircraft;

**"property"** means any land, building, works, aircraft, vehicle, baggage, cargo or other article;

**"restricted area"** means any area in any aerodrome to which access has been restricted by the manager under section 33;

**"Tokyo Convention"** means the Convention on Offences and Certain Other Acts Committed on Board Aircraft signed in Tokyo on the 14th of September, 1963.

(2) For the purposes of this Act-

- (a) the period during which an aircraft is in flight shall be deemed to include the period from the moment all its external doors are closed following embarkation, to the moment any such doors are opened for disembarkation, and, in the case of a forced landing, any period from such landing until the appropriate authority takes over responsibility for the aircraft and for the persons and property on board; and
- (b) an aircraft shall be deemed to be in service during the whole of the period beginning

with the pre-flight preparation of the aircraft and ending 24 hours after the aircraft lands, having completed that flight, and also at any time while the aircraft is in flight.

(3) For the purposes of this Act, the authority responsible for an air navigation installation shall, in the case of an air navigation installation provided by or used wholly or mainly by the Department of Civil Aviation, be deemed to be that Department, and, in the case of any other air navigation installation, be deemed to be the manager of the aerodrome by whom it is provided or by whom it is wholly or mainly used.

### **3. Application**

The Minister may, by order published in the *Gazette*, provide that any of the provisions of this Act shall apply, with or without modification, to aircraft registered or operating in Botswana.

## **PART II**

### ***Offences against the Safety of Aircraft, etc (ss 4-11)***

#### **4. Hijacking**

(1) For the purposes of this Act, and subject to subsections (2) and (3), a person on an aircraft who unlawfully seizes or takes control of that aircraft by the use of force or threats commits the offence of hijacking, whatever his nationality, and whatever the State in which the aircraft is registered.

(2) Where the person who hijacks an aircraft does so outside Botswana, jurisdiction may be exercised in Botswana if-

- (a) the aircraft is registered in Botswana; or
- (b) the person committing the offence is a national of Botswana.

(3) Where the aircraft is used in the military, customs or police service of any country or both the place of take-off and the place of landing are in the territory of the State in which the aircraft is registered, subsection (1) shall not apply unless-

- (i) the person who hijacks the aircraft is a national of Botswana;
- (ii) the act is committed in Botswana; or
- (iii) the aircraft is registered in Botswana or is used in the military, customs or police service of Botswana.

(4) Any person who commits the offence of hijacking shall be liable, on conviction, to imprisonment for life.

(5) Any person who attempts to commit the offence of hijacking or aids, abets, counsels or procures any such person, or is an accomplice to a person who commits or attempts to commit any such offence commits an offence and shall be liable, on conviction, to imprisonment for life.

(6) The Minister may, by order published in the *Gazette*, declare-

- (a) that any two or more States specified in the order have established an organization or agency which operates aircraft; and
- (b) that one of those States has been designated as exercising for aircraft so operated, the powers of the State of registration.

(7) Where the Minister makes the declaration referred to in subsection (6), the State declared under paragraph (b) shall be deemed, for the purposes of this section, to be the State in which any aircraft so operated is registered; but in relation to such an aircraft, subsection (3)(b) shall have effect as if it referred to the territory of any one of the States specified in the order.

#### **5. Destroying, damaging or endangering safety of aircraft**

(1) Subject to subsection (3), any person who, with intent-

- (a) destroys an aircraft in service or causes damage to such aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
- (b) commits or threatens to commit an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft;

- (c) places or causes to be placed on an aircraft in service, a device or article which is likely to destroy the aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight;
  - (d) communicates information relating to the safety of any aircraft which he knows to be false in a material particular, thereby endangering the safety of an aircraft in flight,
- commits an offence.

(2) Where a person commits any act referred to in subsection (1) jurisdiction may be exercised in Botswana if-

- (a) the aircraft aboard which the act is committed is an aircraft registered in Botswana; or
- (b) the person committing the act is a national of Botswana.

(3) Subsection (1) shall not apply to any act committed in relation to an aircraft used in the military, customs or police service unless the act is committed in Botswana or, where the act is committed outside Botswana, the aircraft is registered in Botswana or the person committing it is a national of Botswana.

(4) Any person who commits any offence mentioned in this section shall be liable, on conviction, to imprisonment for life.

(5) Any person who attempts to commit any of the offences mentioned in this section, or aids, abets, counsels or procures any person to commit any such offence, or is an accomplice to a person who commits or attempts to commit any such offence commits an offence and shall be liable, on conviction, to imprisonment for life.

## **6. Other acts endangering or likely to endanger safety of aircraft**

(1) Any person who with intent-

- (a) destroys or damages any air navigation installation or facility or interferes with its operation, if any such act is likely to endanger the safety of any aircraft in flight; or
- (b) communicates information relating to the safety of an aircraft which he knows to be false or misleading in any material particular, thereby endangering the safety of any aircraft in flight,

commits an offence and shall be liable, on conviction, to imprisonment for life.

(2) Subsection (1) shall not apply to the commission of any act unless that act is committed in Botswana or, where it is committed outside Botswana-

- (a) jurisdiction may be exercised in Botswana if the person committing it is a national of Botswana;
- (b) the commission of the act endangers or is likely to endanger the safety, in flight, of a civil aircraft registered in Botswana or chartered to a lessee whose principal place of business or place of permanent residence is in Botswana;
- (c) it is committed on board a civil aircraft registered in Botswana or chartered to a lessee whose principal place of business or place of permanent residence is in Botswana;
- (d) it is committed on board a civil aircraft which lands in Botswana with the person who committed the act still on board; or
- (e) it is committed in relation to property which is situated outside Botswana and is not used for the provision of air navigation facilities in connection with international air navigation, unless the person committing the act is a national of Botswana.

(4) In this section, "civil aircraft" means any aircraft other than an aircraft used in the military, customs or police service.

## **7. Possession of arms on aircraft**

(1) No person shall, without lawful authority or reasonable excuse, the proof of which shall lie on him, have in his possession in any aircraft registered in Botswana, on any aircraft in, or in flight over, Botswana, or in any aerodrome or part of an aerodrome in Botswana, or in any air navigation installation in Botswana which does not form part of an aerodrome, any of the following articles-

- (a) any firearm;



- (b) any explosive or article manufactured, having the appearance of an explosive or adapted so as to have such appearance, or any article marked or labelled so as to indicate that it contains an explosive, whether it is capable of exploding or not; or
- (c) any article not falling within paragraph (a) or (b) which is made or has been adapted for use to cause injury to or incapacitate a person or destroy or damage property, or is intended, by the person in whose possession it is found for any such use, whether by him or by another person.

(2) For the purposes of this section, a person shall be deemed to be in possession of any firearm, explosive or article mentioned in subsection (1) if-

- (a) where he is in an aircraft the article or object in which that firearm, explosive or article is contained has been caused, whether by him or by another person, to be placed in that aircraft as being, or as forming part of, his baggage or other property to be carried on that aircraft;
- (b) where he is in an aerodrome or part of an aerodrome, the article or object in which the firearm, explosive or article is contained has been caused, whether by him or by another person, to be brought into the aerodrome or part thereof as being or forming part of his baggage on a flight from that aerodrome or part thereof, or as forming part of any other property to be carried on a flight on which he is a passenger; or
- (c) he is found in actual physical possession of any such firearm, explosive or article.

(3) Nothing in subsection (2) shall be construed as limiting the circumstances under which a person would, apart from that subsection, be regarded as being in possession of any firearm, explosive or article specified in that subsection.

(4) Any person who is guilty of an offence under this section shall be liable, on conviction, to a fine not exceeding P50 000,00, or to imprisonment for a term not exceeding five years, or to both.

#### **8. Other offences committed aboard aircraft**

(1) Jurisdiction may be exercised in Botswana where any person who, being a national of Botswana, and while outside Botswana, commits any act which would, if committed in Botswana, constitute an offence under the Penal Code.

(2) Any person who commits any act referred to in subsection (1) shall be liable, on conviction, to the penalty prescribed for that offence under the Penal Code.

#### **9. Powers of police, etc to prevent the commission of offences under Part III**

(1) Where a police officer or other authorised person has reasonable cause to suspect that a person about to embark on an aircraft in Botswana, or a person on board such an aircraft intends to commit, in relation to that aircraft, any offence specified in sections 4, 5 and 6, that police officer or other authorised person shall prevent him from travelling on board that aircraft and may, for that purpose-

- (a) prevent him from embarking on the aircraft;
- (b) remove him from the aircraft if he has already embarked; or
- (c) arrest him without warrant and detain him for as long as may be necessary to prevent him from travelling on board that aircraft.

(2) Any person who wilfully obstructs or impedes a police officer or other authorised person acting in pursuance of subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years or to both.

#### **10. Powers of aircraft commanders**

(1) If the commander of an aircraft in flight in Botswana has reasonable cause to believe that any person on board that aircraft has done or is about to do any act on the aircraft while it is in flight which-

- (a) jeopardizes or may jeopardize the safety of the aircraft or of persons or property on board that aircraft, or jeopardizes or may jeopardize good order and discipline on board

- that aircraft; or
- (b) constitutes an offence under any law in force in the country in which the aircraft is registered, the commander may, subject to subsection (7)-
- (i) restrain that person;
  - (ii) cause that person to disembark; or
  - (iii) deliver him, where the aircraft is in Botswana, to a police officer or immigration officer or, where it is in any Convention country or other country, to an officer whose functions correspond to those of a police officer or immigration officer in Botswana; or
  - (iv) take such other reasonable steps as may be necessary to protect the safety of the aircraft or of persons or property on board that aircraft, or to maintain good order or discipline on board the aircraft.

(2) Where the commander causes any person to disembark from an aircraft in terms of subsection (1), he shall report, in writing, the fact of, and the reasons for, the disembarkation of that person to-

- (a) the police and immigration officers of the country of disembarkation; and
- (b) the appropriate diplomatic or consular office of the country of which that person is a national.

(3) Where the commander decides to deliver any person in terms of subsection (1)(b) he shall, before or as soon as reasonably practicable after the aircraft has landed, give notice, in writing, of his decision, and the reasons therefor-

- (a) to a police officer or an immigration officer where the person is to be delivered in Botswana; or
- (b) where the person is to be delivered in a Convention or other country, to a person whose functions correspond to those of a police officer or immigration officer in Botswana.

(4) Any commander who, without reasonable cause fails to comply with the provisions of this section, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000, or to imprisonment for a term not exceeding two years, or to both.

(5) Any member of the crew and any other person on board the aircraft shall, at the request of, or with the authority of, the commander, render assistance in restraining any person whom the commander may restrain in terms of subsection (1), and such member of the crew or other person may, without the authority of the commander, take any of the other measures specified in that subsection which he reasonably believes are necessary to protect the safety of the aircraft or of persons or property on board that aircraft.

(6) Any restraint imposed on any person in terms of this section shall cease as soon as the aircraft lands unless the commander, before the aircraft lands or as soon as possible thereafter, notifies the appropriate authority of the country in which the aircraft lands, or causes him to be notified of the fact that a person on board the aircraft is under restraint, and of the reasons therefor.

(7) Notwithstanding the provisions of this section, the commander may continue to restrain a person-

- (a) after the aircraft lands, until such time as the appropriate authority in the country in which the aircraft lands authorizes the commander to cause that person to disembark from the aircraft; or
- (b) after the aircraft lands, until such time as the commander can deliver that person or cause him to be delivered to a police officer or immigration officer if the aircraft lands in Botswana, or, if the aircraft lands in another Convention country or other country, to a person whose functions correspond to those of a police officer or immigration officer in Botswana.

## **11. Prosecution of offences**

(1) No prosecution for an offence under this Act shall be

instituted without the written consent of the Director of Public Prosecutions.

(2) Notwithstanding the provisions of subsection (1), a person may be arrested for, and charged with, an offence under this Act, or may be charged with an offence and remanded in custody therefor pending the decision of the Director of Public Prosecutions.

### **PART III**

#### ***Protection of Aircraft, Aerodromes and Air Navigation Installations against Acts of Violence (ss 12-28)***

##### ***Powers of Director (ss 12-25)***

#### **12. Authorised Persons**

The Director may, by order published in the *Gazette*, authorise, by designation or by name as may be appropriate, any person to perform any function, duty or act which is required to be performed for the purposes of this Act.

#### **13. Power of Director to require information**

(1) The Director may, by notice in writing, require the operator of any aircraft registered or operating in Botswana, or the manager of any aerodrome in Botswana, to inform him of the measures being taken by such operator or manager in respect of the aircraft or aerodrome, as the case may be, to protect the aircraft, persons or property in that aircraft or aerodrome, against any act of violence.

(2) A notice served under subsection (1) shall specify the date, not being earlier than four weeks from the date on which the notice is served, by which the information required by the Director must be furnished.

(3) If, at any time, the measures referred to in subsection (1) are modified, discontinued, amended or revoked or any further measures are taken, the operator or manager referred to in subsection (1) as the case may be, shall forthwith inform the Director of the modification, discontinuance, amendment, revocation or further measures taken.

(4) Any person who-

- (a) refuses or fails, without reasonable excuse, to comply with the provisions of this section; or
- (b) in furnishing any information in accordance with this section makes any statement which he knows to be false in a material particular shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years, or to both.

#### **14. Power to impose restrictions in relation to aircraft**

(1) The Director may, in writing, direct the operator of any aircraft or class of aircraft registered or operating in Botswana, or the manager of an aerodrome in Botswana-

- (a) not to cause or permit any person or class of persons, or any property to go or to be taken on board an aircraft to which the notice relates, or to come or be brought into proximity of that aircraft unless such person, class of persons or property has been searched by a police officer or such other person as may be specified in such direction; or
- (b) not to cause or permit any aircraft to take off unless that aircraft has been searched by a police officer or such other person as may be specified in the direction.

(2) Subject to subsection (3), the Director may, in writing, direct the operator of any aircraft registered in Botswana not to cause or permit that aircraft to take off unless such modification or alteration of the aircraft or of apparatus or equipment installed in the aircraft as may be specified in the direction have been first carried out, or such additional apparatus or equipment as may be specified in the direction has been first installed in the aircraft.

(3) The Director shall, when he gives a direction to an operator under subsection (2), specify, in the direction, such period as appears to him to be reasonable, within which the measures he has directed to be taken must be effected.

(4) Subject to the provisions of this Part, any direction given by the Director under this

section to any person not to cause or permit anything to be done shall be construed as requiring him to take all such steps as, in the particular circumstances, are practicable and necessary to prevent that thing from being done.

(5) Any person who fails to comply with a direction given to him by the Director under subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years or to both.

#### **15. Searches at aerodromes**

(1) Without prejudice to section 9, where the Director has given a direction to the manager of an aerodrome under section 14, a police officer or other person as may be specified in the direction may, if he has reasonable cause to believe that any device or article which is likely to or could destroy an aircraft or is likely or could damage that aircraft so as to render it incapable of flight or endanger its safety in flight is in, or may be brought into any part of the aerodrome, search, without warrant, any part of that aerodrome, or any aircraft, vehicle or property which, or person who, is in any part of the aerodrome.

(2) Notwithstanding the provisions of subsection (1), a police officer or such other person as may be authorized by the Director shall have the power to search, without warrant, any person who, or any property which, is in any part of an aerodrome.

(3) For the purposes of conducting a search in terms of subsection (1), a female person shall be searched only by a female police officer or other authorized person who is female, and a male person shall be searched only by a male police officer or other authorized person who is male.

(2) For the purposes of conducting a search in terms of subsection (1), a police officer or any other person specified in the direction may-

- (a) enter any land, building or works in the aerodrome; and
- (b) stop any aircraft, vehicle or person from entering or leaving the aerodrome and detain such aircraft, vehicle, person or property for as long as may be necessary to conduct the search.

(3) Any person who-

- (a) fails to comply with a direction given under this section to him by the Director; or
- (b) wilfully obstructs or impedes any person acting in the exercise of any authority conferred on him under subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years, or to both.

#### **16. Additional measures of protection against acts of violence**

(1) The Director may, in writing, direct the operator of an aircraft registered or operating in Botswana, or the manager of an aerodrome in Botswana, to take, in respect of such aircraft, any other measures which the Director thinks necessary to protect the safety of aircraft, property, persons or apparatus or equipment installed in such aircraft or aerodrome, which measures may include the guarding of the aircraft, aerodrome, any persons or property in any part of the aerodrome, against acts of violence.

(2) A direction given under this section may be of a general or specific nature, and may require any measures specified in the direction to be taken at such time or within such period as may be so specified.

(3) A direction given to an operator under subsection (1) may be given so as to relate to either all aircraft registered or operating in Botswana of which at the time the direction is given or at any subsequent time he is the operator, or to only one or more such aircraft, or to a class of such aircraft, as specified in the direction.

(4) Any person who-

- (a) fails, without reasonable excuse, to comply with a direction given to him by the Director under subsection (1); or
- (b) wilfully interferes with any building constructed or works executed on any land, or with

anything installed on, over or across any land in compliance with a direction given under this section, shall be guilty of an offence and shall be liable on conviction, to a fine not exceeding P10 000,00 or to imprisonment for a term not exceeding two years or to both.

(5) The ownership of any property placed on, under or affixed to any land in compliance with any direction under this section shall not be affected by reason that it is so placed, or affixed.

#### **17. Matters which may be included in directions**

(1) A direction given by the Director under section 14 (1) or section 16 may specify the minimum number of persons by whom a search to which the direction relates is to be carried out, the qualifications which any person carrying out a search must possess, the manner in which the search is to be carried out, and any apparatus, equipment or additional equipment or apparatus which may be used by the person carrying out such search.

(2) A direction given by the Director under section 14 (2) may specify the qualifications which any person carrying out any modification, alteration or installation to which the direction relates, must possess.

(3) A direction given by the Director under section 16 may specify-

- (a) the minimum number of persons who may be employed for the purposes of any measures specified to be taken by an operator or manager under the direction and the qualifications which those persons must possess; and
- (b) any apparatus, equipment or other aids which such persons may use for the said purposes.

(4) Nothing contained in subsections (1) to (3) shall be construed as limiting the generality of any provision of this Part.

#### **18. Limitations on scope of directions under this Part**

(1) A direction given by the Director under this Part shall not have effect in relation to any aircraft used in the military, customs or police service of Botswana.

(2) A direction given by the Director under this Part shall not have effect in relation to any aircraft of which the operator is the Government of a country outside Botswana, or is a department or agency of such a Government, except when any such aircraft is being used for the carriage of passengers or cargo for reward, or has been or is allocated by that Government, department or agency thereof for such use.

(3) A direction, except in so far as it requires any building or other works to be constructed, executed, altered, demolished or removed, shall not be construed as requiring or authorising the operator of any aircraft, or the manager of any aerodrome, or any person acting as the servant or agent of such an operator or manager, to do anything which, apart from the direction, would constitute an act of violence, but nothing in this subsection shall restrict the use of such force as may be reasonable in the circumstances by such operator, manager, police officer or any other authorised person.

(4) A direction given by the Director under this Part requiring anything to be done or not done in a country outside Botswana shall not have effect except in relation to aircraft registered in Botswana, neither shall its effect be to contravene any law in force in that country.

(5) Where a direction given to the manager of an aerodrome requires any building or other works to be constructed, executed, altered, demolished or removed, or requires any other measures to be taken on such land, the direction shall not confer, on the manager, any rights as against a person having-

- (a) an interest in that land;
- (b) a right to occupy that land;
- (c) a right restrictive of its use,

and the direction shall not be construed as requiring the manager to do anything which would be actionable at the suit or instance of such a person in his capacity as a person having that



interest or right.

#### **19. Authorisation of persons under sections 14 and 16**

A direction given to any person under section 14 or 16 authorising him to do anything may be addressed to that person by name or by designation, or may be framed in general terms applicable to all persons to whom such a direction may be given, or to any class of such persons to whom that particular person belongs.

#### **20. Delegation of powers by authorised person**

A person to whom a direction is given by the Director may delegate the authority granted him under that direction-

- (a) where that person is a body corporate, to the manager, secretary, or similar officer of that body;
- (b) in any other case, to any person holding a comparable office or position.

#### **21. Exceptions to directions of Director**

(1) If it appears to the Director that any direction given by him under section 14 or 16 should not apply for a certain period or on any particular occasion in relation to any aircraft or to a class thereof, or in relation to any person or property described in the direction, he may authorise the person at whom the direction is addressed to disregard the requirements of the direction on such occasion, or for such period as he may specify; and the direction shall, in relation to that aircraft or class thereof, or in relation to such person or property, have effect in that case subject to the exception so specified.

(2) A notification given under subsection (1) shall be deemed to have been given to the person to whom it is addressed if it is given-

- (a) to any person authorised by that person to receive any such direction or notification;
- (b) where that person is a body corporate, to the manager, secretary or similar officer of the body corporate; and
- (c) in any other case, to anyone holding a comparable office or position in that person's employ.

#### **22. Operation of directions under Part II in relation to rights and duties under other laws**

(1) A direction given under this Part shall, in so far as it requires anything to be done or not done in Botswana, have effect notwithstanding anything contained in any contract whether it is a Botswana contract or not, or contained in, or having effect by virtue of, any other enactment or any rule of law; and accordingly, no criminal or civil proceedings shall lie against any person in a court in Botswana by reason of anything done or not done by him or on his behalf in compliance with such direction.

(2) The direction shall, in so far as it requires anything to be done or not done outside Botswana, have effect, notwithstanding anything contained in any contract, whether or not it is a Botswana contract; and, accordingly, where that direction is inconsistent with anything in that contract, it shall, without prejudice to any proceedings in a court other than a court in Botswana, be construed as requiring compliance with the direction notwithstanding that compliance would be in breach of that contract.

(3) No proceedings for breach of contract shall lie against any person in a court in Botswana by reason of anything done or not done by him or on his behalf at a place outside Botswana in compliance with that direction if the contract in question is a Botswana contract.

(4) Nothing in this section shall preclude civil or criminal liability in respect of any person where a direction is necessitated by the negligence or unlawful act or omission on the part of that person.

(5) In this section, "Botswana contract" means a contract which is either expressed to have effect in accordance with the law of Botswana, or, not being so expressed, is one of which the proper law is the law of Botswana.

#### **23. Objections to directions under section 16**



(1) Where the person to whom any direction is given by the Director under section 16 objects to that direction, he shall, within fourteen days of receiving that direction, serve a notice in writing on the National Aviation Security and Facilitation Committee, setting out the grounds of his objection, and shall copy such notice to the Director.

(2) The Committee shall, within twenty one days of receiving a notice of objection from any person, consider the grounds of the objection and shall, after such consideration, serve, on the objector, a notice in writing either-

- (a) confirming the direction of the Director as originally given;
- (b) confirming the direction subject to one or more modifications; or
- (c) ordering the withdrawal, by the Director, of the direction.

(3) The Committee shall give the appellant the opportunity, if he requests it, to appear before it.

#### **24. Appeals to the Minister**

(1) Any person aggrieved by a decision of the Committee under section 23 may appeal to the Minister by serving, on him, a notice, in writing, which notice he shall copy to the Committee and to the Director.

(2) The Minister shall, within thirty days of receiving a notice of appeal from any person, consider the grounds of that appeal and, after considering such grounds, serve, on the appellant, notice in writing either-

- (a) confirming the decision of the Committee confirming the direction of the Director;
- (b) confirming the decision of the Committee confirming the direction of the Director with modifications; or
- (c) giving such other decision as he considers appropriate.

(3) The Minister shall also serve, on the Director, a copy of his decision.

#### **25. Inspection of aircraft and aerodromes**

(1) For the purpose of enabling the Director to determine whether to give a direction to any person under this Part, or of ascertaining whether any direction given under this Part is being or has been complied with, the Director may authorise a police officer or any other person in writing to inspect any aircraft registered or operating in Botswana at a time when it is in Botswana, or any aerodrome in Botswana and may, for the purpose of carrying out that inspection, and on production of his credentials if required-

- (a) enter that aircraft and detain it for as long as may be necessary to carry out that inspection; or
- (b) enter any building or works in the aerodrome or enter upon any land in the aerodrome.

(2) An authorised officer carrying out an inspection under subsection (1) may-

- (a) require the operator of an aircraft or the manager of an aerodrome to furnish him with such information as he may consider necessary for the purpose for which the inspection is being carried out;
- (b) subject any property found by him on that aircraft to such tests as he may consider necessary for the purpose for which the inspection is being carried out; or
- (c) subject that aerodrome or any property found in it to such tests as he may consider necessary for the purpose for which the inspection is being carried out.

(3) An authorised person may use such force as may be necessary for the purpose of entering any aircraft, building or works, or upon any land.

(4) Any person who-

- (a) wilfully obstructs or impedes a person acting in the exercise of a power conferred on him by this section;
- (b) fails, without reasonable excuse, to comply with the requirement imposed on him by subsection 2 (a); or
- (c) being required to furnish any information required of him under this Part, makes any statement which he knows or has reason to believe to be false in a material particular,

shall be guilty of an offence and shall be liable on conviction to fine not exceeding P10 000,00, or to imprisonment for a term not exceeding five years or to both.

### ***Air Navigation Installations (s 26)***

#### **26. Application of provisions of Part II to air navigation installations**

(1) Sections 13, 15, 16, 17, 18 and 25 shall have effect in relation to air navigation installations in Botswana in accordance with this section.

(2) Subject to subsection (6), sections 13, 15, 16, 17, 18 and 25 shall have effect in relation to any air navigation installation in Botswana which does not form part of an aerodrome, as if any reference in them to an aerodrome were a reference to such an air navigation installation, and any reference to the manager of an aerodrome were a reference to the authority responsible for such an air navigation installation.

(3) Where an air navigation installation forms part of an aerodrome in Botswana, those sections shall have effect, subject to subsection (6), as if any reference in them to an aerodrome were a reference either-

- (a) to an aerodrome;
- (b) to an air navigation installation which forms part of an aerodrome; or
- (c) to so much of an aerodrome as does not consist of an air navigation installation.

(4) A notice served under section 13 or a direction given under section 14 or 16 may be served or given in respect of the whole of the aerodrome, in respect of the air navigation installation or in respect of so much of the aerodrome as does not consist of an air navigation installation.

(5) For the purposes-

- (a) of the service of a notice or the giving of a direction under section 13, 14 or 16 as modified by subsection (3) where the notice is to be served or the direction given in respect of an air navigation installation; and
- (b) of the operation of section 18 (5) in relation to a direction so given, any reference in any of those sections to the manager of the aerodrome shall be construed as being a reference to any person who is either the manager of the aerodrome or the authority responsible for the air navigation installation.

(6) Subsections (2) and (3) shall not apply to section 15(1); but where a direction given under section 16 as applied or modified by this section, is in force-

- (a) if it is a direction given in respect of an air navigation installation, whether that installation forms part of an aerodrome or not, section 15(1) shall have effect in relation to that direction as if the air navigation installation were an aerodrome, and, where the direction was given to the authority responsible for the air navigation installation, as if it had been given to the manager of that aerodrome;
- (b) if it is a direction given in respect of so much of an aerodrome as does not consist of an air navigation installation, section 15(1) shall have effect in relation to that direction as if any air navigation installation comprised in the aerodrome did not form part of the aerodrome.

(7) A direction under section 16, as applied or modified by this section may be given to the authority responsible for an air navigation installation so as to relate either-

- (a) to all air navigation installations in Botswana for which it is responsible at the time the direction is given; or
- (b) to such air navigation installation or to a class thereof as may be specified in the direction.

(8) Any reference in section 16, 21 (1) or 23 to a direction given under a provision mentioned therein shall be construed as including a reference to a direction given under that provision as applied or modified by this section.

(9) Notwithstanding anything in section 25(2)(b) a person inspecting an air navigation installation under that section or under that section as applied or modified by this section shall

not be empowered thereby to test any apparatus or equipment which constitutes or forms part of the air navigation installation.

#### ***Miscellaneous (ss 27-28)***

### **27. Compensation for measures taken under Part II**

(1) A person having any interest in any land within or outside an aerodrome shall be entitled to compensation equal to the amount of the depreciation or loss of that interest caused by the compliance, by the manager of an aerodrome or the authority responsible for an air navigation installation, with a direction under section 16 to construct, alter, demolish or remove any building, or to execute any other works or land within or outside the aerodrome or air navigation installation.

(2) If any land other than that on which the measures referred to in subsection (1) are taken is injuriously affected by the taking of those measures, any person having an interest in that other land who suffers loss in consequence of its being injuriously affected shall be entitled to compensation equal to the amount of that loss.

(3) Any compensation to which a person is entitled under this section shall be payable to him by the person by whom the measures in question were taken.

### **28. Service of documents**

Any document required or authorised to be served on or given to any person by any provision of this Act may be so served or given-

- (a) by delivering it to him personally, or to his duly authorised agent;
- (b) by sending it to him by registered post at his usual or last known residence or place of business; or
- (c) in the case of a body corporate, by delivering it to the secretary, clerk or similar officer of the body corporate at its registered or principal office in Botswana or, if it has no office in Botswana by sending it by registered post to the secretary, clerk or similar officer of that body corporate.

## **PART IV**

### ***Security at Designated Aerodromes (ss 29-34)***

### **29. Designated aerodromes**

(1) The Minister may, for the purposes of this Part, by order published in the *Gazette*, designate any aerodrome used for the purposes of civil aviation as a special aerodrome (hereinafter referred to as "a designated aerodrome") if he considers that the policing of that aerodrome should, in the interests of the preservation of the peace and the prevention of crime, be undertaken by the police.

(2) Before making an Order under subsection (1) the Minister shall consult the manager of that aerodrome and the Commissioner of Police.

### **30. Exercise of police powers at designated aerodromes**

(1) A police officer shall, at a designated aerodrome, in the execution of his duties, and, in particular, for the purposes of exercising the powers conferred on him by this Part, be entitled to enter any part of that aerodrome.

(2) No member of an aerodrome security force employed or maintained by the manager at any aerodrome, and not being a police officer, shall exercise the functions or powers conferred by this Act or any other law on a police officer.

### **31. Prevention of theft at designated aerodromes**

(1) A police officer may, at a designated aerodrome-

- (a) stop, and without warrant, search and arrest any person whom he has reasonable cause to suspect of having, in his possession, any thing which has been stolen or unlawfully obtained from the aerodrome;
- (b) if he has reasonable cause to suspect that any thing which has been stolen or unlawfully obtained from the aerodrome may be found in or on any vehicle carrying any person, or in or on any aircraft, stop and without warrant, detain and search that

- vehicle or aircraft;
- (c) stop any person, vehicle or aircraft leaving a cargo area and inspect any goods carried by that person, vehicle or aircraft and detain any goods for which no document signed by the manager or other authorised person authorising their removal from that area can be produced by that person, the person driving that vehicle or a member of the crew of that aircraft.

(2) In this section, "cargo area" means any area which the Minister has prescribed as an area which is used wholly or mainly for the storage or handling of cargo in an aerodrome.

(3) The powers conferred on the police by this section shall be without prejudice to any powers exercisable by them apart from this section.

### **32. Control of traffic at designated aerodromes**

All movement of traffic within a designated aerodrome shall be controlled by the police.

### **33. Restricted areas**

(1) The manager may, within a designated aerodrome, designate, for purposes of safety or security, any area as an area to which access shall be restricted, and shall clearly mark such area to indicate that it is an area to which access is restricted, or shall ensure that it is so marked.

(2) No person shall enter or remain in a restricted area unless that person has, in his possession, an identity card which permits him to be in that area and which complies with all conditions laid down by the authority which issued the identity card as may be prescribed by regulations.

(3) Any person who contravenes the provisions of subsection (2) commits an offence and shall be liable, on conviction, to a fine not exceeding P5 000,00, or to imprisonment for a term not exceeding three months or to both.

### **34. Regulations**

The Minister may make regulations for the better carrying out of the provisions of this Act, and, without prejudice to the generality of this section, may make regulations for the following purposes-

- (a) the appointment of security police and guards at aerodromes, and their duties;
- (b) the spelling out of procedures for entry of persons, vehicles and animals into various parts of aerodromes;
- (c) the issuance of identity cards for entry into various parts of aerodromes; and
- (d) any other matter affecting aviation security.

## **PART IV**

### ***National Aviation Security and Facilitation Committee (ss 35-38)***

### **35. Establishment of National Aviation Security and Facilitation Committee**

(1) There is hereby established a committee to be known as the National Aviation Security and Facilitation Committee (hereinafter referred to as "the Committee").

(2) The Committee shall consist of a Chairman, a Vice-Chairman and six other members as follows, who shall be appointed by the Minister for such period as shall be specified-

- (a) the Chairman shall be the Permanent Secretary, Ministry of Works, Transport and Communications;
- (b) the Vice-Chairman shall be the Director of Civil Aviation;
- (c) the other members shall be-
  - (i) the Commander of the Botswana Defence Force or his representative;
  - (ii) the Commissioner of Police or his representative
  - (iii) the Director of Customs and Excise or his representative
  - (iv) the Chief Immigration Officer or his representative
  - (v) two representatives from the aviation industry.

- (d) The Minister may also co-opt two other members who, in his opinion, have knowledge and experience likely to contribute to the carrying out of the Committee's functions.

### **36. Functions of Committee**

The functions of the Committee shall be to-

- (a) advise the Minister and the civil aviation industry on aviation security measures;
- (b) recommend, to the Minister, the appropriate security measures to be taken by those concerned with aviation security;
- (c) review the implementation of aviation security measures;
- (d) co-ordinate and implement, as appropriate, aviation security measures, procedures and programmes; and
- (e) liaise with various Government Departments, operators and agencies concerned with aviation security.

### **37. Meetings**

(1) The Committee shall meet at such times and places as the Chairman, or, if he is absent, the Vice-Chairman, may determine, but not less than three times a year.

(2) The Chairman, or if he is absent, the Vice-Chairman, shall preside at all meetings of the Committee, and if both the Chairman and the Vice-Chairman are absent from a meeting, the members present shall elect a person from among themselves to preside at such meeting.

(3) The decision of a majority of the members of the Committee present at a meeting of the Committee shall constitute a decision of the Committee and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(4) Five members of the Committee shall form a quorum.

### **38. Aerodrome Security Committees**

The Minister may, in consultation with the Director, establish Aerodrome Security Committees whose functions shall be to-

- (a) monitor security at aerodromes and advise the National Aviation Security and Facilitation Committee on the security situations prevailing at aerodromes in the country;
- (b) implement the policy decisions of the National Aviation Security and Facilitation Committee on security at aerodromes in the country; and
- (c) do any other thing which the Minister may, by regulations, prescribe.

## **CHAPTER 71:03**

## **CIVIL AVIATION REGULATION (REFORM)**

### **ARRANGEMENT OF SECTIONS**

#### **SECTION**

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13. Monitoring compliance with the Act
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Schedule

Act 15, 2003.

### **An Act to reform the regulation of scheduled air transport services**

[Date of Assent: 27th August, 2003]

[Date of Commencement: On Notice]

#### **PART I**

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

#### **1. Short title and commencement**

This Act may be cited as the Civil Aviation Regulation (Reform) Act, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

#### **2. Interpretation**

In this Act, unless the context otherwise requires -

**"Air Botswana"** means Air Botswana as registered under the Companies Act;

**"air transport licence"** means a licence issued by the Regulator, granting an operator the authority to carry passengers, mail or cargo, by air, for hire or reward, on such scheduled air transport services, and subject to such conditions, as may be specified in the licence;

**"closing date"** means the date when all or part of Air Botswana's equity is first owned by a person other than the Government;

**"exclusivity period"** means the period commencing on the closing date and ending on the fifth anniversary of the closing date;

**"IATA"** means the International Air Transport Association;

**"Independent Regulator"** means the independent body responsible for the economic regulation of civil aviation, that may be established;

**"licensee"** means the holder of an air transport licence;

**"maximum tariff"** means the maximum tariff that may be charged by the licensee in connection with an air route, as set out in the relevant air transport licence;

**"national"** means an individual, company, government or agency thereof, or trust established by an individual, company, government or agency thereof, that is not a non-national;

**"non-national"** means-

- (a) an individual, other than a Botswana citizen;
- (b) a body corporate incorporated, formed or otherwise organised outside Botswana;
- (c) a foreign government or an agency thereof;
- (d) a body corporate that is effectively controlled by a non-national, as defined in any of paragraphs (a) to (c) of this section;
- (e) a trust-
  - (i) established by a non-national, as defined in any of paragraphs (b) to (d) of this section, other than a trust for the administration of a pension fund for the benefit of individuals, the majority of whom are nationals, or



- (ii) in which non-nationals, as defined in any of paragraphs (a) to (d) of this section have more than 50% of the beneficial interests; or
- (f) a body corporate that is effectively controlled by a trust described in paragraph (e) of this section;

**"operator"**, in relation to an air service, means a person providing, or offering to provide, an air service;

**"Regulator"** means-

- (a) the Independent Regulator; or
- (b) until the Independent Regulator is established, the Director of Civil Aviation; and

**"tariff cap mechanism"** means an independent, fair and transparent method of adjusting tariffs to offset inflation and other factors, set out in the Schedule hereto.

### **3. When body corporate may be deemed to be effectively controlled by a person**

A body corporate shall be deemed to be effectively controlled by a person if -

- (a) the securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect the directors of the body corporate are held, otherwise than by way of security only, by, or for the benefit of, that person; and
- (b) the votes attached to the securities referred to in paragraph (a) are sufficient, if exercised, to elect a majority of the directors of the body corporate.

### **4. When air transport service operator may be deemed to be substantially owned by nationals**

An air transport service operator shall be deemed to be substantially owned by nationals if such nationals beneficially own, in the aggregate, more than 50% of the equity of such air transport service operator.

### **5. Limitation on equity ownership**

Any person who beneficially owns, directly or indirectly, more than 35% of the equity of any licensee shall be prohibited from beneficially owning more than 10% of the equity of any other licensee.

## **PART II**

### ***Domestic and International Air Routes (ss 6-9)***

### **6. Domestic air transport licence**

(1) The Regulator shall issue, to Air Botswana, an air transport licence for the routes for which Air Botswana provides scheduled air transport services on the closing date:

Provided that, in relation to such route, Air Botswana declared, to the Regulator, prior to the closing date, its intent to continue to provide such service.

(2) The Regulator shall issue, to Air Botswana, an air transport licence in relation to the air routes for which it does not provide scheduled air transport services on the closing date if, in relation to such route, Air Botswana declares to the Regulator, within 6 months of the closing date, its intent to provide such service:

Provided that Air Botswana commences service on such route prior to the first anniversary of the closing date.

### **7. Effect of air transport licence**

(1) An air transport licence issued to Air Botswana under section 6 shall confer, on Air Botswana, the right, during the exclusivity period, to be the only provider of scheduled air transport services on the air routes covered by the air transport licence, and no other air transport licence shall confer such right on any other operator.

(2) Notwithstanding the provisions of subsection (1), if Air Botswana abandons or fails to perform on any air route referred to in subsection (1) before the exclusivity period expires, its air transport licence for that route may be revoked.

### **8. Licensing of air routes after exclusivity period, etc.**

After the expiry of the exclusivity period, or the six month period or the first anniversary referred to in section 6(2) without commencement of service by Air Botswana, or the routes

referred to in section 7(2), as the case may be, licensing for such routes shall be the function of the Regulator.

**9. Air Botswana to be sole designated airline during exclusivity period**

Until the expiry of the exclusivity period, the Government shall ensure that Air Botswana is Botswana's designated airline for all international air routes:

Provided that, at all times, substantial ownership and effective control of the licensee is vested in one or more nationals.

**PART III**

***Tariff cap mechanism (ss 10-12)***

**10. Increases in maximum tariff**

Until the third anniversary of the closing date, or the first anniversary of the establishment of the Independent Regulator, whichever is the later, all increases in the maximum tariff shall be made in accordance with the tariff cap mechanism, and thereafter, all increases in the maximum tariff shall be determined by the Independent Regulator.

**11. Licensee may charge less than maximum tariff**

Nothing in this Act shall be construed as prohibiting a licensee from charging less than the maximum tariff for any given route.

**12. Application of tariff cap mechanism**

Notwithstanding any other provision of this Act or any other written law to the contrary, the tariff cap mechanism, referred to in section 10, shall apply to all operators of domestic and international scheduled air transport services.

**PART IV**

***Miscellaneous provisions (ss 13-16)***

**13. Monitoring compliance with the Act**

(1) The Regulator shall ensure that a licensee complies with the provisions of this Act.

(2) A licensee shall provide to the Regulator, within 10 days from the date of a request being made by the Regulator, such information as the Regulator may require to enable it to monitor compliance by the licensee with the licensee's obligations under this Act.

**14. Appeals**

A person who is aggrieved by anything done under this Act may, within 28 days of the decision being made, appeal to the High Court.

**15. Offences and penalties**

A person who contravenes any provision of this Act, any condition of an air transport licence, or any decision of the Regulator, shall be guilty of an offence and liable to a fine of not less than P500,000, but not more than P5,000,000 and, where such person is a licensee, the Regulator may revoke any or all of the licensee's air transport licences.

**16. Regulations**

The Minister may make regulations for the better carrying out of the provisions of this Act.

**SCHEDULE**

**TARIFF CAP MECHANISM**

***(Section 2)***

**1. Interpretation**

In this Schedule, unless the context otherwise requires-  
"adjustment" means-

- (a) the tariff increase approved by the IATA Tariff Co-ordinating Conference; or
- (b) the Botswana Consumer Price Index increase most recently published by the Central Statistics Office,

whichever is the greater:

Provided that, in the absence of the tariff increase by the IATA Tariff Co-ordinating Conference, the Botswana Consumer Price Index shall apply.

## **2. Application**

This tariff cap adjustment mechanism shall apply to domestic and international air routes:

Provided that, in relation to international routes, only paragraph 1(a) shall apply.

## **3. Purpose**

The purpose of this tariff cap adjustment mechanism is the assurance of an independent, fair and transparent mechanism to adjust tariffs to offset inflation and other factors.

## **4. Notification**

Within 30 days of the approval, in whole or in part, of a tariff increase proposed by a licensee, the Regulator shall notify the licensee of the adjustment.

## **5. Increase**

The maximum tariff shall be increased by adjustment. Such increase shall become effective immediately following the notification of a tariff increase by the IATA Tariff Co-ordinating Conference or the publication of the Consumer Price Index by the Central Statistics Office, as the case may be.

## **6. Unsolicited recommendation**

Paragraphs 4 and 5 shall apply *mutatis mutandis* to a tariff increase resulting from an IATA recommendation not solicited by a licensee, and, "adjustment", for the purposes of paragraphs 3 and 4, shall refer only to that tariff increase.

## **7. Extraordinary events**

A licensee may petition the Regulator for permission to increase the maximum tariff in order to compensate for-

- (a) a cumulative devaluation of 20% or more in the value of the Pula against the United States Dollar:

Provided that-

- (i) the devaluation has occurred within any period of 90 consecutive days or less, and
- (ii) the devaluation has remained in effect for at least 120 consecutive days calculated from the date the threshold of 20% has been achieved;

- (b) a cumulative increase of 20% or more in the price of aviation fuel in Pula:

Provided that-

- (i) the increase has occurred within any period of 90 consecutive days or less, and
- (ii) the increase has remained in effect for at least 120 consecutive days calculated from the date the increase threshold of 20% has been achieved.

### **CHAPTER 71:04**

### **CIVIL AVIATION AUTHORITY**

### **ARRANGEMENT OF SECTIONS**

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Act 33, 2004,  
S.I. 51, 2007.

**An Act to establish a Civil Aviation Authority; to provide for its powers and functions; to provide for the establishment of a Board of the Authority; and for matters incidental or connected therewith.**

*[Date of Commencement: Part I, ss 3, 4, 6, 9, Part III, Part IV, ss 27, 29:32: 20th August, 2007.  
Remainder of Act: On Notice.]*

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

**1. Short title**

This Act may be cited as the Civil Aviation Authority Act.

**2. Interpretation**

In this Act, unless the context otherwise requires –

**"accident"** means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and the time all such persons have disembarked and in which –

- (a) a person is fatally or seriously injured as a result of being in or upon the aircraft or by direct contact with the aircraft or anything attached there to or by direct exposure to jet blast, except where the injuries are from natural causes, self-inflicted or inflicted by some other person or are to stowaways hiding outside the area normally available to the passengers or crew;
- (b) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft and would normally require major repair or replacement of the affected component, other than –
  - (i) engine failure, or
  - (ii) damage limited to the engines or their accessories or to propeller or rotor blades, bent fairings or cowlings, wing tips, antennae, tyres, brakes or small dents or puncture holes in the aircraft skin; or

(c) the aircraft is missing or completely inaccessible;

**"aerial work"** means work, other than public transport, for which an aircraft is flown for hire and reward;

**"aerodrome"** means any area of land or water (including any buildings, installations and equipment) designed, equipped, set apart or commonly used, or affording facilities, for the landing and departure of aircraft;

**"AIC"** means Aeronautical Information Circulars;

**"AIP"** means Aeronautical Information Publications;

**"aircraft"** includes all flying machines, aeroplanes, seaplanes, flying boats, helicopters, gliders, and all other machines that derive support from the reactions of the air, or other craft that is lighter than air;

**"air navigation service"** includes –

- (a) communication services, ground to ground, or ground to air, provided for safety of aircraft;
- (b) navigation services including radio, radar, satellite and visual aids to navigation;
- (c) air traffic services provided for the safety and regularity of flight; and
- (d) meteorological services provided for the safety and regularity of flight;

**"air route"** means navigational airspace between two points and the terrain beneath such airspace identified, to the extent necessary, for the application of flight;

**"air route and airway facilities"** means facilities provided to permit safe navigation of aircraft within the airspace of air routes and airways by –

- (a) visual and non-visual aids along the routes and airways;
- (b) visual and non-visual aids to approach and landing, at airports;
- (c) communication services;
- (d) meteorological services;
- (e) air traffic control services and facilities; and
- (f) flight service services and facilities;

**"airway"** means a designated air route of specified width and altitudes;

**"air transport service"** means a service for the carriage by air of passengers, mail or other cargo;

**"Appeals Tribunal"** means the Appeals Tribunal established under section 43;

**"assets"** means any movable, immovable, corporeal or incorporeal property;

**"Authority"** means the Civil Aviation Authority of Botswana established by section 3;

**"aviation security"** means human and material resources intended to safeguard civil aviation against acts of unlawful interference;

**"Board"** means the Board of the Authority established under section 14;

**"Botswana aircraft"** means an aircraft registered in Botswana in accordance with regulations made under this Act;

**"CAPs"** means Civil Aviation Publications;

**"cargo"** means movable property, mail and animals;

**"certificate"** includes an Air Operator's Certificate;

**"Chairman"** means the Chairman of the Board;

**"charges"** means fares, rates, fees, concession monies, rentals or subscriptions, received or receivable, charged or chargeable for any licence or certificate issued, service performed or facilities provided by the Authority;

**"Chicago Convention"** means the Convention on International Civil Aviation signed at Chicago on 7th December 1944, and includes any protocols amending the Convention, to which Botswana is a party, and any annexes to that Convention relating to international standards and recommended practices (SARPS) adopted in accordance with the Convention;

**"Chief Executive Officer"** means the Chief Executive Officer of the Authority, appointed under section 22;



**"committee"** means a committee established under section 20;

**"crew"** means all persons working on the aircraft, including the pilot or operator;

**"flight"** means –

- (a) in the case of a heavier than air aircraft, the operation of the aircraft from the moment at which the aircraft first moves under its own power for the purpose of taking-off until the moment at which it comes to rest after being airborne; and
- (b) in the case of a lighter than air aircraft, the operation of the aircraft from the moment when it becomes detached from the surface of the earth or a fixed object on the surface of the earth until the moment when it becomes again attached to the surface of the earth;

**"foreign aircraft"** means an aircraft other than a Botswana aircraft;

**"ICAO"** means International Civil Aviation Organisation;

**"land"** includes any estate or interest in land or an easement;

**"licensed aerodrome"** means an airport licensed in accordance with regulations made under this Act;

**"Member"** means a member of the Board;

**"Minister"** means the Minister for the time being responsible for civil aviation;

**"NOTAM"** means Notices to Airmen;

**"officer"** means a member of the staff of the Authority;

**"operate"**, in relation to an aerodrome, includes manage, maintain, secure and improve the aerodrome;

**"operated by the Authority"** means operated by the Authority in accordance with the provisions of this Act;

**"operator"**, in relation to an aircraft, means the person having management of the aircraft at a particular time;

**"owner"**, in relation to an aircraft or aerodrome, includes the person in whose name the aircraft or aerodrome is registered or licensed, any person who is or has been acting in Botswana for a foreign owner, or any person by whom the aircraft or aerodrome is hired at the time;

**"passenger"** means any person being conveyed by the aircraft, who is not a member of the crew;

**"private airport"** means an airport other than an airport belonging to the Authority, the Botswana Police or the Botswana Defence Force;

**"public transport"** means carriage of passengers or cargo for hire or reward given or promised to be given; and

**"publication"** means information given in any of the following publications issued on or after the coming into effect of this Act, that is, NOTAM, AIC, AIP, Notices to Licensed Aircraft Maintenance Engineers and to Owners of Civil Aircraft, CAPs or such other official publications so issued for the purpose of giving effect to any of the provisions of this Act.

## **PART II**

### ***Establishment, objectives, functions and powers of Authority (ss 3 - 13)***

#### **3. Establishment of Authority**

There is hereby established an Authority to be known as the Civil Aviation Authority of Botswana which shall be a body corporate with a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as a body corporate may by law perform.

#### **4. Seal of Authority**

(1) The Seal of the Authority shall be such device as may be determined by the Authority and shall be kept by the Secretary.

(2) The Seal of the Authority shall be authenticated by the signatures of the Chief Executive Officer and the Secretary.

(3) In the absence of the Chief Executive Officer, the person performing the functions of the Chief Executive Officer may authenticate the Seal in his place and, in the absence of the Secretary, the person performing the functions of the Secretary may authenticate in his place.

(4) The Chief Executive Officer may, in writing, delegate to another officer his power to authenticate the Seal.

(5) The Secretary may, in writing, delegate to another officer his power to authenticate the Seal.

(6) A document issued by the Authority and sealed with the Seal of the Authority which Seal is authenticated in the manner provided by this section shall be received and taken to be a true instrument without further proof unless the contrary is shown.

## **5. Jurisdiction of Authority**

The Authority shall have jurisdiction over –

- (a) all foreign aircraft in Botswana;
- (b) all Botswana aircraft within or outside Botswana;
- (c) all air navigation in Botswana;
- (d) all airports and aerodromes in Botswana;
- (e) all aspects of air transport services, public transport and aerial work in Botswana;
- (f) all aspects of aviation security in Botswana; and
- (g) all air routes, airways, airway facilities and air navigation service in Botswana.

## **6. Objective of Authority**

The objective of the Authority is to promote the safe, regular, secure and efficient use and development of civil aviation in Botswana.

## **7. Functions and powers of Authority**

(1) The Authority shall be responsible for the implementation and enforcement of the regulations made by the Minister under section 49.

(2) The Minister may delegate to the Authority any of the responsibilities conferred on him by this Act, except the power to make regulations.

(3) The Authority 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 not exceeding P50,000 or imprisonment for a term not exceeding 10 years or both.

(4) In addition to its functions under subsection (1) the Authority shall advise the Government on policy matters concerning air transport and with regard to international conventions relating to civil aviation and the adoption of measures necessary to give effect to the standards and recommended practices under those conventions.

## **8. Borrowing powers of Authority**

(1) The Authority may, with the prior written approval of the Minister, borrow funds required for meeting its obligations and for carrying out its functions.

(2) The Authority may borrow temporarily, by way of overdraft or otherwise, sums of money to be paid within a short period, for any urgent requirements of the Authority in the discharge of its functions.

(3) The Authority may raise funds for the discharge of its functions by the issuing of stock, and any interest payable on any stock issued under this subsection shall be a charge upon all property, undertaking and revenue of the Authority.

(4) For purposes of paying any loan under this section and any interest on that loan, the Authority may –

- (a) charge the assets, undertakings and revenue of the Authority;
- (b) issue debentures and other types of bonds; and
- (c) do any other thing necessary to enable the Authority to meet its obligations under that loan.

(5) The Minister for the time being responsible for finance shall, from time to time,

prescribe the maximum sum that may be borrowed under this section.

#### **9. Additional powers of Authority**

In addition to any other powers conferred on it by this Act, the Authority may –

- (a) delegate the performance of its duties and functions to other persons, in accordance with a written contract in this regard, except the powers delegated to it by the Minister;
- (b) establish subsidiaries and enter into such joint ventures, partnerships and other associations with public or private institutions as it may consider necessary to enable it to conduct its affairs, perform its functions and discharge its duties;
- (c) enter into contracts, subject to any financial limitation set by the Minister;
- (d) acquire, hold, lease out and dispose of all types of assets;
- (e) let or hire plant, machinery, equipment or assets acquired or required by the Authority, as the case may be; and
- (f) appoint a body or bodies to advise it in relation to the performance of its functions.

#### **10. Principles of operation**

The Authority shall perform its functions in accordance with sound commercial and financial principles and shall ensure, as far as possible, that its revenue is sufficient to meet the expenditure properly chargeable to its revenue.

#### **11. Consultation with users and departments**

(1) In the performance of its functions and exercise of its powers, the Authority shall, where appropriate, consult with Government, commercial, industrial, consumer and other relevant bodies and organisations.

(2) The Authority shall establish whatever consultative mechanisms it may consider necessary to secure the views of the users of the Authority's facilities and services.

#### **12. International agreements**

The Authority shall perform its functions in a manner consistent with the obligations of Botswana under the Chicago Convention and any other agreement between Botswana and any other country related to aviation safety or the regulation of air transport services.

#### **13. Directions by Minister**

(1) The Minister may give the Authority written general or specific directions as to the performance of its functions.

(2) Particulars of any directions referred to in subsection (1) shall be published in the *Gazette*, and included in the annual report of the Authority for the financial year in which they were given.

### **PART III**

#### ***The Board (ss 14 - 21)***

#### **14. Establishment of Board**

(1) There shall be a Board of the Authority which shall be the governing body of the Authority.

(2) The Board shall consist of a Chairman and not less than four and not more than eight Members, one of whom shall be the Chief Executive Officer.

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

(4) All Members, except the Chief Executive Officer, shall be appointed by the Minister for a maximum period of three years on such terms and conditions as may be specified in their instruments of appointment and shall be eligible for re-appointment.

(5) The Minister shall appoint one of the Members, other than the Chief Executive Officer, to be Chairman.

#### **15. Qualifications for appointment as Members**

(1) A person may be appointed as a Member who is –

- (a) a citizen of Botswana;
- (b) lawfully resident in Botswana; or
- (c) a non-resident of Botswana.

(2) When appointing Members, the Minister shall ensure that the Members possess demonstrated experience and capability in a relevant discipline including, but not limited to, air transportation, industry, commerce, finance, law, engineering or government.

#### **16. Disqualification from appointment as Member**

Notwithstanding section 15, a person shall not qualify for appointment as a Member who

- 
- (a) is, at the time of appointment, a Member of Parliament, a councillor, a land board officer or a Chief;
- (b) has in terms of any law in force in any country –
  - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
  - (ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside;
- (c) within a period of 10 years immediately preceding the date of his appointment, been convicted –
  - (i) of a criminal offence in any country, or
  - (ii) of any criminal offence for which he has not received a free pardon and notwithstanding that the sentence has been suspended, which, if committed in Botswana, would have resulted in a criminal offence having been committed, the penalty for which would be at least six months imprisonment without the option of a fine.

#### **17. Vacation of office and filling of vacancies**

(1) A Member shall vacate his office –

- (a) if he becomes subject to a disqualification referred to in section 16;
- (b) upon giving not less than one month's written notice to the Minister;
- (c) if his appointment is terminated in terms of subsection (4);
- (d) if he ceases to be a citizen of Botswana; or
- (e) if he ceases to be lawfully resident in Botswana.

(2) As soon as possible after a vacancy occurs in the membership of the Board (including a vacancy in the office of the Chairman), the Chairman shall notify the Minister thereof, in writing.

(3) If a Member ceases to hold office for any reason, the Minister may, within three months of receiving the notice under subsection (2) appoint another person to take the place of that Member, and the person so appointed shall hold office for the remainder of the term of office of the Member in whose place he was appointed and shall be eligible for reappointment.

(4) The Minister may terminate the appointment of a Member –

- (a) if the Member conducts himself in a manner that is detrimental to the efficient and proper performance of the functions of the Board;
- (b) if the Member has been found to be physically or mentally incapable of performing his duties efficiently, and the Member's medical doctor has issued a certificate to that effect;
- (c) if the Member becomes involved in a conflict of interest; or
- (d) if the Member is absent from three consecutive meetings of the Board without the prior permission of the Chairman or if in any given year, attends less than half of the meetings of the Board.

#### **18. Functions and powers of Board**

The Board shall be responsible for the general control of the performance and management of the undertakings and affairs of the Authority, and without derogating from the generality of this provision, the Board shall –

- (a) determine the general performance of the Authority;
- (b) approve business plans of the Authority;
- (c) determine and approve estimates of income and expenditure of the Authority;

- (d) review the performance of the top management officers of the Authority;
- (e) monitor the deployment and utilisation of the movable and immovable property of the Authority; and
- (f) do such other things as are provided by this Act or as may be necessary for the proper implementation of this Act.

## **19. Meetings of Board**

(1) The Board shall meet for the discharge of its functions as often as is necessary, but shall meet at least once in every three months at such time and place as the Chairman may determine.

(2) The Chairman shall preside at all meetings of the Board at which he is present, and, in his absence, the Members present shall elect one Member from among themselves to preside at a meeting of the Board.

(3) The Chairman shall, in writing, give each Member at least 10 days notice of a meeting of the Board, but may, at the request of at least two Members, call an urgent meeting of the Board upon giving a shorter notice.

(4) The notice referred to in subsection (3) shall state –

- (a) the place and time of the meeting;
- (b) the agenda for the meeting; and
- (c) the text of any resolution to be submitted to the meeting.

(5) Subject to this Act, the Board shall regulate its own procedure.

(6) A simple majority of Members shall form a quorum at a meeting of the Board.

(7) A decision of a simple majority of the Members present and voting at a meeting of the Board shall be the decision of the Board, and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

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

(9) The Chairman shall cause to be recorded and kept minutes of all proceedings of meetings of the Board.

(10) The Board may invite any number of persons to act as consultants or advisers at any of its meetings.

(11) A Member who has any personal interest in any specific transaction or matter before the Board shall disclose the nature of his interest to the Board and shall be disqualified from taking part in the deliberations of the Board with respect to that transaction or matter, if it is a contract and, in any other case, if the Board decides that the nature of the declared interest might prejudice its consideration of the transaction or matter.

(12) A Member who contravenes the provisions of subsection (11) shall be liable to removal from the Board.

(13) For the purposes of subsection (11), a notice given by a Member stating that he is a member of a body corporate or firm shall make him a person having an interest in a specific transaction or matter between the Authority and that body corporate or firm.

(14) If a Member cannot be present in a meeting where he may give notice of interest, a Member may, in writing, give notice of interest in any matter under subsection (11).

## **20. Committees of Board**

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

(2) The Board may appoint to the committees established under subsection (1) such number of persons, either from among the Members of the Board or not or from both, as it considers appropriate, to be members of such committees and such persons shall hold office for such period as the Board may determine:

Provided that the chairman of each committee so appointed shall be appointed by the



Board from among Members.

(3) Subject to the specific or general directions of the Board, a committee may regulate its own procedure.

(4) Meetings of a committee shall be held at such time and place as the committee may determine, or as the Board may direct.

(5) The chairman of each committee shall cause to be recorded and kept minutes of all proceedings of meetings of the committee.

## **21. Remuneration of members and members of committees**

A Member or a member of a committee or any other person not being an employee of the Authority, attending a meeting of the Board or of a committee, may be paid such remuneration or allowance as the Minister may determine.

### **PART IV**

#### ***Staff of Authority (ss 22 - 26)***

## **22. Chief Executive Officer**

(1) There shall be a Chief Executive Officer of the Authority, who shall be appointed by the Minister, on the recommendation of the Board, on such terms and conditions as may be specified in the instrument of appointment.

(2) The Chief Executive Officer shall be a person with considerable knowledge and experience in aviation, administration, industry or engineering and who has such other qualifications and experience or proven ability in other fields as the Board and the Minister may consider relevant.

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

(4) The Chief Executive Officer shall not, while in the employment of the Authority, engage in paid employment outside the duties of his office in the Authority.

(5) The Chief Executive Officer shall hold office for a period not exceeding five years, as may be specified in the instrument of appointment, and shall be eligible for re-appointment.

(6) The Minister may, after consultation with the Board, terminate the appointment of the Chief Executive Officer –

- (a) if the Chief Executive Officer conducts himself in a manner that is detrimental to the objective of, or the proper performance of the functions of, the Authority;
- (b) if the Chief Executive Officer has been found to be physically or mentally incapable of performing his duties efficiently, and his medical doctor has issued a certificate to that effect;
- (c) if the Chief Executive Officer becomes bankrupt; or
- (d) if the Chief Executive Officer absents himself from office without reasonable excuse.

(7) The Chief Executive Officer may resign his office by giving six months' notice, in writing, to the Board and the Minister.

## **23. Duties of Chief Executive Officer**

(1) The Chief Executive Officer shall, subject to the control of the Board on matters of policy, be responsible for –

- (a) the supervision of the day-to-day affairs of the Authority and ensuring that the Authority is carrying out the functions and duties placed upon it in terms of this Act;
- (b) running the Authority on sound commercial and financial principles in accordance with policies and decisions made by the Board;
- (c) the planning and implementation of the development of the civil aviation industry in Botswana, aiming at promoting efficient, safe and reliable aviation services;
- (d) controlling the resources and operations of all the services under the Authority;
- (e) submitting business plans and estimates of income and expenditure to the Board for its approval;
- (f) implementing the decisions of the Board; and
- (g) carrying out any duty that may be conferred on him by the Minister or the Board.



(2) In the performance of his duties, the Chief Executive Officer shall keep the Board fully informed of the affairs of the Authority and shall consult the Board from time to time, as may be necessary.

(3) The Chief Executive Officer may delegate to the Secretary or any other senior officer of the Authority, as he considers appropriate, the exercise of any powers which he is authorised to exercise under this Act.

#### **24. Secretary**

(1) There shall be a Secretary to the Board who shall be appointed by the Chief Executive Officer, with the approval of the Board, on such terms and conditions as may be specified in the instrument of appointment.

(2) The Secretary shall, in addition to any function that may be assigned to him by the Board or the Chief Executive Officer, be responsible for –

- (a) taking the minutes of the meetings of the Board;
- (b) keeping the records of all decisions of the Board; and
- (c) keeping records of legal transactions of the Authority.

(3) The Secretary shall, unless under exceptional circumstances the Board otherwise directs, in writing, giving the circumstances leading to its decision, attend all meetings of the Board, but shall not have a right to vote on any matter before the Board.

(4) In the absence of the Secretary, the Board may appoint another employee of the Authority to perform the functions of the Secretary until the Secretary resumes office or the vacancy is filled, as the case may be.

(5) In the performance of his duties, the Secretary shall be responsible to the Chief Executive Officer.

#### **25. Other staff**

(1) In addition to the Chief Executive Officer and the Secretary, the Authority shall have such other officers and supporting staff as the Board may determine.

(2) The Chief Executive Officer shall appoint the other officers and supporting staff referred to in subsection (1).

#### **26. Personnel Management**

The Authority shall, in the case of its employees, pay wages, salaries, pensions, allowances and any other pecuniary and non-pecuniary benefits as the Board shall determine, subject to the approval of the Minister.

### **PART V**

#### ***Financial Provisions (ss 27 - 35)***

#### **27. Funds of Authority**

(1) The funds of the Authority shall consist of –

- (a) such capital as may be determined by the Government;
- (b) such money as may be appropriated by Parliament for the purposes of the Authority;
- (c) grants from Government;
- (d) grants and loans from any body, organisation or person;
- (e) interest on savings made by the Authority;
- (f) such money as may accrue to the Authority in the discharge of its functions; and
- (g) money from any other source as may be approved by the Minister.

(2) The Authority may open bank accounts in both domestic and foreign currencies in such bank or banks as the Board may approve.

(3) The Authority may, with the approval of the Board, invest any of its funds which it does not immediately require to use.

#### **28. Entity in which Authority has interest not to contravene Act**

A company or partnership in which the Authority may have an interest shall not do anything that is prohibited by, or do anything in any manner that contravenes, this Act.

#### **29. Provision of information**

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

### **30. Financial year**

The financial year of the Authority shall be a period of twelve months commencing on the 1st April in each year and ending on the 31st March of the following year.

### **31. Accounts**

(1) The Authority shall keep proper books of accounts of all its income and expenditure and proper records in relation to those accounts.

(2) The Authority shall cause to be prepared in respect of each financial year and not later than four months after the end of that financial year, a statement of accounts which shall include –

- (a) a balance sheet, an audited statement of income and expenditure and a statement of surplus and deficit; and
- (b) any other information in respect of the financial affairs of the Authority as the Minister for the time being responsible for finance may require.

### **32. Audit**

(1) The accounts of the Authority shall, in respect of each financial year, be audited by the Auditor-General or a certified public accountant, appointed by him.

(2) The Authority shall ensure that within four months after the end of the financial year a statement of accounts referred to in section 31 (2) is submitted to the Auditor-General for auditing.

(3) The Auditor-General or any certified public accountant appointed by him shall, within two months after receipt of the statement of accounts submitted to him under subsection (2), audit the accounts and deliver to the Authority a copy of the audited accounts and his report on those accounts, stating any matter which in his opinion should be brought to the attention of the Minister.

(4) The Auditor-General or any certified public accountant appointed by him shall have access to all books of accounts, vouchers and other financial records of the Authority and be entitled to have any information and explanation required by him in relation to those records.

### **33. Annual report**

(1) Not later than six months after the end of each financial year, the Authority shall prepare an Annual Report on the performance of its functions during that year which Report shall include, among other things –

(a) an audited financial statement and a report of the Auditor-General on that statement; and

(b) a record of all directions received from the Minister in the course of the year.

(2) The Annual Report referred to in subsection (1) shall be presented to the Minister, who shall, within 28 days of receipt thereof, lay it before the National Assembly after which it shall be published in the *Gazette*.

### **34. Business plan**

(1) The Authority shall produce a five-year business plan to be prepared by the Chief Executive Officer, and thereafter a subsequent business plan shall be prepared by him at least 12 months before the expiry of the current business plan.

(2) The business plan referred to in subsection (1) shall contain financial targets and performance targets for the Authority and shall be submitted to the Minister after approval by the Board.

(3) When preparing the business plan, the Chief Executive Officer shall consider –

- (a) the need for high standards of aviation safety;
- (b) the objectives and policies of the Government known to the Authority;
- (c) any directions given by the Minister;

- (d) any payments to be made by the Government to the Authority and their expressed purposes;
- (e) the need to maintain the extent of the Government's equity in the Authority;
- (f) the need to maintain a reasonable level of reserves having regard to estimated future infrastructure requirements;
- (g) the need to earn a reasonable rate of return on the Authority's assets other than assets wholly or principally used in the performance of regulatory functions or the provision of search and rescue services;
- (h) the expectation of the Government that the Authority will pay a reasonable dividend as other needs of the Authority permit;
- (i) any contributions to international bodies connected with civil aviation; and
- (j) any other commercial consideration that the Chief Executive Officer considers appropriate.

(4) The Board shall submit the business plan to the Minister at least four months prior to the commencement of the financial year in question, and the Minister shall submit any comments he may have on it not later than two months after its receipt.

(5) A summary of the business plan shall be published by the Authority in the *Gazette* after expiry of the period for comment, by the Minister.

(6) At least four months prior to the commencement of the financial year in question, the Authority shall provide to the Minister an estimate of any subsidy funding required to maintain operations during the coming financial year which estimate shall identify specific uses to which the funds will be put, why the service is required, and what actions are being taken to reduce the amount of any subsidy required.

### **35. Charges**

(1) The Authority shall draw up a scheme prescribing charges to be paid to the Authority in respect of services or facilities provided by the Authority.

(2) Without limiting the generality of subsection (1), the services and facilities that the Authority may charge for, include –

- (a) the issuance, renewal or variation of airworthiness certificates;
- (b) inspection of aircraft;
- (c) the issuance, renewal or variation of personnel licences;
- (d) aircraft landing;
- (e) aircraft parking;
- (f) air navigation and communications;
- (g) fuel handling;
- (h) passenger services;
- (i) air operator's certificates;
- (j) the approval of aircraft maintenance organisations;
- (k) noise and environmental pollution;
- (l) air transport licences;
- (m) traffic handling;
- (n) aircraft handling;
- (o) any other services related to the operation of aerodromes; and
- (p) use or rental of any assets of the Authority.

(3) The scheme referred to in subsection (1) shall come into force on publication thereof in the *Gazette*, which publication shall not be less than 60 days following the submission of the scheme for approval to the Minister.

(4) The scheme referred to in subsection (1) shall be published in an AIC giving the effective date of coming into force.

(5) The Authority may change and revise charges.

(6) Any change to a charge shall come into force on publication thereof in the *Gazette*.

(7) A charge shall be payable within a period specified by the Authority, and any failure to pay within the specified period may attract a penalty which shall be a percentage thereof as prescribed by the Authority and calculated in such manner as may be prescribed by the Authority from the due date for payment until the actual date of payment.

(8) If the total amount due is not paid within the period specified, the Authority may seize the aircraft or other property which is the subject of the amount not paid, after giving a reasonable notice of the intention to seize the aircraft or property to the owner or operator of the aircraft or property, and the Authority shall retain the aircraft or property until payment is made in full.

(9) If the total amount due remains unpaid for a period of 60 days from the date of the seizure of the aircraft or other property which is the subject of the amount not paid, the Authority may commence legal proceedings to sell the aircraft in accordance with such procedure as the Minister may, by statutory instrument, prescribe.

(10) The charge referred to in subsection (7) shall be reasonably related to expenses incurred, or to be incurred, by the Authority in relation to the provision of a service or facility.

## **PART VI**

### ***Civil Aviation (ss 36 - 40)***

#### **36. Air Navigation services**

The Authority shall provide air navigation services in Botswana airspace, and for any area outside Botswana for which Botswana has, in accordance with international arrangements, undertaken to provide air navigation services and to direct and coordinate search and rescue services therein.

#### **37. Safety standards**

The Authority shall set and maintain safety standards related to personnel, aircraft and aerodromes, which meet international criteria.

#### **38. Aeronautical information services**

(1) The Authority shall provide a service to be known as the Aeronautical Information Services, which shall comprise the collection and dissemination of aeronautical information and instructions with respect to –

- (a) aerodromes;
- (b) air traffic control services and facilities;
- (c) communication and air navigation services and facilities;
- (d) meteorological services and facilities;
- (e) search and rescue services and facilities;
- (f) procedures and regulatory requirements connected with air navigation;
- (g) hazards to air navigation;
- (h) differences from ICAO Standards, Recommended Practices and Procedures;
- (i) units of measurement;
- (j) nationality and registration marks;
- (k) special equipment to be carried on aircraft;
- (l) bird concentrations on or in the vicinity of aerodromes;
- (m) prohibited or restricted airspace and danger areas;
- (n) minimum flight altitudes;
- (o) fees and charges; and
- (p) aeronautical charts.

(2) In providing the Aeronautical Information Service, the Authority shall publish the AIP which shall include –

- (a) the aeronautical information and instructions that are by this Act required to be published;
- (b) such other aeronautical information and instructions as are of lasting character essential to air navigation; and

- (c) any matter relating to the facilitation of air traffic.
- (3) The Authority shall, in addition to the AIP, publish NOTAM which shall include –
  - (a) the aeronautical information and instructions that may, by this Act, be required to be published; and
  - (b) such other aeronautical information and instructions as are of a temporary character, or cannot be promptly made available by publication in the Aeronautical Information Publication.
- (4) The Authority shall forward copies of the AIP and NOTAM's (Class Two) to ICAO.
- (5) The Authority may also publish information on various aviation topics such as licensing, maintenance or any other item such as Civil Aviation Publications, AIC and Airworthiness Circulars.
- (6) Unless a document published by the Authority states explicitly that it is of an advisory or guidance nature, publications identified in this section shall have legal force.

#### **39. Technical services**

The Authority shall provide technical services for the design, installation, maintenance and modification of electronic, radio and other equipment used in the provision of air navigation and communication services.

#### **40. Meteorological services**

- (1) The Authority shall provide specified aviation meteorological services in Botswana and shall, in a timely and orderly fashion, provide information concerning weather conditions and forecasts to all aircraft in Botswana airspace.
- (2) The Department of Meteorological Services shall provide appropriate aviation meteorological services to the Authority.
- (3) The basis on which meteorological services shall be provided to the Authority shall be determined by mutual agreement between the Department of Meteorological Services and the Authority, but this agreement shall generally follow the cost allocation principles and guidelines issued by ICAO on the subject.

### **PART VII**

#### ***Air transport and international obligations (ss 41 - 42)***

#### **41. International obligations**

- (1) The Minister shall be the Aeronautical Authority for Botswana for the purpose of entering into agreements between states.
- (2) The Authority shall comply with all international agreements relating to civil aviation, to which Botswana is a party.
- (3) The Authority shall advise and assist the Government in its negotiations with other countries in regard to international air services originating, transiting or terminating at Botswana aerodromes and those overflying Botswana.
- (4) The Authority shall act as adviser to the Government and assist in its dealings with ICAO, the Commonwealth Air Transport Council, and other similar international civil aviation bodies.

#### **42. Fares**

The Minister, on the recommendation of the Authority, may, unless specified in any other law to the contrary, determine fares, freight rates and related matters.

### **PART VIII**

#### ***Appeals (s 43)***

#### **43. Appeals Tribunal**

- (1) There shall be an Appeals Tribunal which shall hear and determine appeals from decisions of the Authority under this Act.
- (2) The Appeals Tribunal shall comprise three persons appointed by the Minister –
  - (a) one of whom shall have expertise and experience in administrative law;
  - (b) one of whom shall have expertise and experience in aviation and its regulations; and

- (c) one of whom shall have expertise and experience in the issue which is the subject of the appeal.
- (3) A person aggrieved by a decision of the Appeals Tribunal may appeal to the High Court.

## **PART IX**

### ***Airports (ss 44 - 47)***

#### **44. Establishment of airports**

(1) The Authority shall establish and maintain airports and provide and maintain in connection therewith, their roads, approaches, apparatus, equipment, buildings and other accommodation.

(2) The Authority, in formulating regulations with regard to the location, establishment, maintenance, use and operation of and security of airports, shall consult with –

- (a) the local authorities in whose areas the airport or any part thereof is situated;
- (b) other local authorities whose areas are in the neighbourhood of the airport; and
- (c) other organisations representing the interests of persons concerned with the locality in which the airport is situated.

#### **45. Land use restriction**

(1) The Minister, on the recommendation of the Authority, may by regulation impose prohibitions or restrictions on the use of any area of land or water as may be necessary to ensure safe and efficient civil aviation, and without limiting the generality of the foregoing, the Minister may give directions –

- (a) prohibiting or restricting the putting up of buildings or structures in such area;
- (b) requiring the total or partial demolition of any building or structure;
- (c) on the uses to which land in such area may not be put;
- (d) restricting the height of trees and other natural and man-made structures upon any land;
- (e) extinguishing any private right of way over land;
- (f) restricting the installation of cables, mains, pipes, wires or other apparatus upon, across, under, or over any land within the area;
- (g) restricting the use of certain electronics;
- (h) relating to the stopping or diversion of any highway;
- (i) as to the zoning of any area of land; and
- (j) prescribing offences and penalties not exceeding a fine of P6,000 or imprisonment for a term not exceeding three years or both, in respect of the contravention of any of the provisions of such Order.

(2) Before the Minister imposes any prohibition or restriction in any area, he shall notify the public of his intention to do so.

(3) The Minister shall cause notice of every zoning regulation referred to in subsection (1)(i) that is proposed to be made to be published once a week, for two consecutive weeks, in at least one local newspaper, if any, circulating in the area in which the proposed zoning regulation relates and once a week, for two consecutive weeks, in two consecutive issues of the *Gazette*.

(4) Reasonable opportunity shall be afforded to interested persons to make representations to the Minister with respect to zoning regulations, before the restrictions are actually made.

#### **46. Customs, immigration and health services**

(1) The Authority shall ensure that suitable facilities are made available to the relevant Government authorities and agencies at air-ports for the provision of customs, immigration and health services.

(2) The provision of the customs, immigration and health services referred to in subsection (1) shall not be the responsibility of the Authority, but of the appropriate Government authority or agency.



(3) The terms and conditions under which the facilities referred to in subsection (1) shall be made available and provided shall be determined by agreement between the Authority and the Government authority or agency concerned.

#### **47. Liability**

Airports established by the Authority shall be made available for use by civil aircraft on condition that the use is entirely at the risk of the registered owner of the aircraft concerned and that neither the Authority, the licensee nor the Government, shall be held responsible for loss or damage resulting from the use of any Authority or licensed airport or its accessory facilities.

### **PART X**

#### ***Security and policing (s 48)***

#### **48. Security bye-laws**

For the purpose of protecting passengers, crew members, aircraft, airports and other aviation facilities, preventing unlawful interference with civil aviation and ensuring that appropriate action is taken when interference occurs or is likely to occur, the Authority may make bye-laws –

- (a) requiring any owner or operator of a Botswana registered aircraft to establish, maintain and carry out, at an airport and on the aircraft and at any aviation facilities under his control, security measures that may be prescribed by the regulations or security measures necessary for the purpose for which the regulations are made;
- (b) requiring any owner or operator of an aircraft registered outside Botswana that lands at or departs from any airport in Botswana to establish, maintain and carry out, at aerodromes and on the aircraft and at any aviation facilities under his control, security measures that may be prescribed by the regulations or security measures necessary for the purpose for which the regulations are made;
- (c) requiring any operator of a licensed airport to maintain and carry out security measures at the aerodrome;
- (d) relating to the screening of all passengers and cargo for security purposes;
- (e) relating to the submission, by persons boarding an aircraft, to searches by an authorised security officer;
- (f) relating to the submission by any person boarding an aircraft of the goods taken or placed by him on board the aircraft to search by an authorised security officer;
- (g) relating to the security of airports;
- (h) relating to the security of equipment and installations, including those that are located away from airports they are connected to;
- (i) the policing of property of the Authority by a security force trained in airports security; and
- (j) the inspection of all aircraft on Botswana territory, regardless of the place of registration or place of origin.

### **PART XI**

#### ***Miscellaneous provisions (ss 49 - 54)***

#### **49. Regulations**

(1) The Minister, on the recommendation of the Authority, may make regulations for the better carrying out of the provisions of this Act and may impose penalties for breach by any person of any such regulations.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations –

- (a) relating to –
  - (i) the licensing of air transport,
  - (ii) the designation of domestic and international air carriers,
  - (iii) the provision of air navigation services,
  - (iv) the establishment, maintenance, development, operation and ownership of

- airports,
- (v) the provision of rescue and fire fighting services at airports,
- (vi) the provision of assistance and information, including aeronautical information services,
- (vii) the co-ordination and direction of search and rescue services,
- (viii) the provision of facilities and services in support of inspectors of accidents in relation to the investigation of accidents,
- (ix) the registration of aircraft,
- (x) the safety regulation of aircraft,
- (xi) the provision, in conjunction with other agencies of the Government, including the military, of arrangements to prevent or deal with all unlawful interference with aviation security (including passenger screening) in Botswana,
- (xii) the control of air traffic,
- (xiii) the certification of operators of aircraft,
- (xiv) the licensing of civil aviation personnel,
- (xv) the licensing of private airports,
- (xvi) the provision of meteorological information to aircraft,
- (xvii) the publication and dissemination of all regulations pertaining to civil aviation,
- (xviii) the licensing of crews engaged in the operation of aircraft,
- (xix) the design, construction, maintenance, operation and use of aircraft and related equipment,
- (xx) the personnel engaged in the maintenance of aircraft and related equipment,
- (xxi) the planning, construction and use of airports,
- (xxii) the personnel engaged in anything referred to in sub paragraph (iv),
- (xxiii) the planning, establishment, maintenance, operation and use of air route and airway facilities, rescue and firefighting services, and search and rescue services, and any construction associated with those facilities and services,
- (xxiv) the person engaged in anything referred to in sub paragraph (xxiii),
- (xxv) giving effect to, and carrying out, the provisions of the Chicago Convention,
- (xxvi) public transport, aerial work and the prohibition of the carriage by air of goods of such classes as may be prescribed,
- (xxvii) the minimising or preventing of interference with the use of, or the effectiveness of apparatus used in connection, with, air navigation or communications, and the prohibiting of, or the regulating of, the use of such apparatus and the display of such signs and lights as may endanger aircraft,
- (xxviii) the regulation of the making of signals and other communications by or to aircraft and persons carried in aircraft,
- (xxix) the prohibition, restriction or regulation of the carrying on of any trade or business within any airport which is under the control of the Authority or licensed by the Authority,
- (xxx) the establishment and regulation of the conditions of use, including the charges to be made for the use of any airport operated by the Authority,
- (xxxi) the prescribing of charges payable for the implementation or carrying out of any of the functions, duties, responsibilities and services to be provided by the Authority,
- (xxxii) any other functions that may be conferred on the Authority by the Minister or any other law,
- (xxxiii) the licensing of flight crew members, air traffic controllers and operators of equipment used to provide services relating to civil aviation,
- (xxxiv) the licensing of persons engaged in the design, manufacture, distribution, maintenance, approval, certification or installation of aeronautical products,
- (xxxv) the installation, maintenance, approval and certification of equipment used to

- provide services relating to civil aviation,
- (xxxvi) activities at aerodromes and the location of aerodromes,
- (xxxvii) noise emanating from aerodromes and aircraft,
- (xxxviii) the conditions under which persons or personal belongings, baggage, goods or cargo of any kind may be transported by aircraft,
- (xxxix) the keeping and preservation of records and documents relating to aerodromes, persons holding Botswana Civil Aviation documents, and equipment and facilities used to provide services relating to civil aviation,
- (xl) the handling, marking, storage and delivery of fuel and any lubricants or chemicals used during or in connection with the operation of aircraft,
- (xli) the airworthiness of aircraft,
- (xlii) transport of dangerous goods, ammunition and munitions of war,
- (xliii) any other area that the Authority may consider necessary to ensure the safety of civil aviation, and
- (xliv) the procedure of appeals and the proceedings of the Appeals Tribunal;
- (b) prescribing the procedure to be followed when commencing proceedings to sell an aircraft or other property which is the subject of any amount not paid under this Act in respect of services or facilities provided by the Authority;
- (c) to ensure the safe, regular, orderly and expeditious flow of air traffic, in respect of –
  - (i) air traffic control procedures and services,
  - (ii) the provision of navigation aids,
  - (iii) standards for navigation aids,
  - (iv) requirements for equipment to be carried on aircraft,
  - (v) the conditions under which aircraft may be used or operated or under which any act may be performed in or from aircraft,
  - (vi) the aerodromes at which aircraft coming from outside Botswana are to land and the conditions to which such aircraft are subject,
  - (vii) the classification and use of airspace and the control and use of air routes, and
  - (viii) rules of the air;
- (d) for the control of the operation of aircraft within or directly above the aerodrome for the purposes of limiting or mitigating the effect of noise, vibration or atmospheric pollution caused by aircraft using the aerodrome; and
- (e) necessary for regulating the location, establishment, maintenance, use, operation and security of airports and the conduct of all persons while within airports and in connection with the roads, approaches, apparatus, equipment, buildings and other accommodation on airports, and, in particular –
  - (i) relating to securing the safety of aircraft, vehicles and persons using the airport and preventing danger to the public arising from the use and operation of an airport,
  - (ii) relating to the prevention of obstruction within an airport,
  - (iii) regulating vehicular traffic anywhere within the airport, including speed restrictions and parking limitations,
  - (iv) prohibiting or restricting access of persons, vehicles or animals to any part of an airport,
  - (v) relating to the preservation of good order and conduct within an airport and prevention of damage to property,
  - (vi) requiring any person, if so requested by a police officer or airport official, to leave the airport, or to state his name and address and the purpose of his presence on the airport,
  - (vii) relating to the disposal of unclaimed property in or upon the establishment of airports, and

(viii) for controlling the disposal of waste, international garbage and spilled fuel.

(3) For the purposes of subsection (2)(e)(viii), "international garbage" means garbage generated in the aircraft by passengers and crew on international flights.

#### **50. Power to take action**

The Authority may take such legal measures as are necessary to ensure implementation of and compliance with the regulations made under this Act.

#### **51. Exemption**

(1) The Minister may, on such terms and conditions as he may consider necessary, exempt any person, aircraft, airport, airport facility or service, from application of any regulations made under this Act, if the exemption is in the public interest and is not likely to affect aviation safety.

(2) Any exemption granted under this section shall be published in the *Gazette*.

#### **52. Powers of Minister in times of war**

In time of war, whether actual or imminent, or of great national emergency, and if the President declares the existence of such a state of affairs, the Minister may –

- (a) by Order published in the *Gazette*, regulate or prohibit, either absolutely or subject to such conditions as may be contained in the Order, navigation of all aircraft over Botswana;
- (b) by Order published in the *Gazette*, provide for taking of, and using for the purpose of the Government's military forces, any aerodromes, or any aircraft, machinery, plant, material or things found on the aerodrome, and for regulating or prohibiting the use, erection, building, maintenance or establishment of any aerodrome, or flying school; and
- (c) by Order published in the *Gazette*, require the following to be placed at the disposal of the Minister –
  - (i) all or any of the property or rights of, or under the control of, the Authority,
  - (ii) the whole or any part of the relevant undertaking of any Botswana air transport business, and
  - (iii) all or any property or rights of, or under the control of, any businesses which appertain to the undertaking under sub paragraph (ii).

#### **53. Offences**

A person who contravenes any directive given by the Minister in terms of this Act, or any regulation or bye-law made in terms of this Act, or any notice or information issued by the Authority in terms of this Act, shall be guilty of an offence and liable to a fine not exceeding P50,000 or to imprisonment for a term not exceeding 10 years, or to both.

#### **54. Acts done on Botswana aircraft outside Botswana**

(1) Any act done by any person on a Botswana aircraft outside Botswana which, if it had been done by him in Botswana, would have constituted an offence shall, for the purposes of any criminal proceedings in Botswana against that person in respect of that act, be deemed to have been done by him in Botswana.

(2) Except with the consent of the Attorney-General, no proceedings shall be instituted by virtue of subsection (1) against a person who is not a citizen of Botswana at the time of the act in question.

### **PART XII**

#### ***Transitional provisions (ss 55 - 57)***

#### **55. Transfer of assets**

Upon the commencement of this Act, all existing assets used in the provision of civil aviation services and owned by the Government, shall be transferred to, and vest in, the Authority.

#### **56. Savings**

The regulations relating to the control and governance of civil aviation made under the

Civil Aviation Act and in existence prior to the commencement of this Act shall be deemed to be regulations made under the provisions of this Act, and shall remain in force until such time as the Minister, on the recommendation of the Authority, may revoke or amend them.

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