

CHAPTER 68:02
COPYRIGHT AND NEIGHBOURING RIGHTS

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Act 8, 2000,
S.I. 65, 2001,
Act 6, 2006,
S.I. 71, 2006.

An Act to make provision for the regulation of copyright and to provide for matters connected to and incidental to the foregoing.

[Date of Commencement: 1st October, 2006]

PART I

Preliminary (ss 1-2)

1. Short title and commencement

This Act may be cited as the Copyright and Neighbouring Rights Act, 2000.

2. Interpretation

In this Act unless the context otherwise requires-

"adaptation" includes, in relation to a-

- (a) computer programme, a version of the programme in which it is converted into or out of a computer language or code, or into a different computer language or code otherwise than incidentally in the course of running the programme;
- (b) literary work in a non-dramatic form, a version of the work, whether in its original language or in a different language, in a dramatic form;
- (c) literary work in a dramatic form, a version of the work, whether in its original language or in a different language, in a non-dramatic form;
- (d) literary work, whether in a non-dramatic form or in a dramatic form-
 - (i) a translation of the work; or
 - (ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical; and
- (e) musical work, an arrangement or transcription of the work;

"artistic work" means-

- (a) a graphic work, photograph, sculpture or collage, irrespective of its artistic quality;
- (b) a work of architecture, being a building or a model of a building, irrespective of its artistic quality;
- (c) a work of artistic craftsmanship not falling within paragraph (a) or (b) of this definition, irrespective of its artistic quality;

"audiovisual work" means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible to being made visible, and where accompanied by sounds, susceptible to being made audible;

"author" means the person who has created a work, and shall include-

- (a) in relation to a literary work, the author of the work;
- (b) in relation to a musical work, the composer;
- (c) in relation to an artistic work other than a photograph, the artist;
- (d) in relation to a photograph, the photographer;
- (e) in the case of a sound recording or film, the person by whom the arrangements necessary for making the recording or film are undertaken;
- (f) in the case of a broadcast, the person making the broadcast or, in case of broadcast which relays another broadcast by reception and immediate re-transmission, the person making the other broadcast;
- (g) in the case of a cable programme, the person providing the cable programme service in which the programme is included;
- (h) in the case of a typographical arrangement of a published edition, the publisher;
- (i) in the case of a literary, dramatic, musical or artistic work which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken;

"broadcasting" means the communication of a work, a performance or a sound recording to the public by wireless transmission, including transmission by satellite;

"collective work" means a work created by two or more persons at the initiative and under the direction of another person, with the understanding that it will be disclosed by the latter person under his or its own name and that the identity of the contributing persons will not be indicated;

"communication to the public" means the transmission by wire or without wire of the images or sounds, or both, of a work, a performance, a sound recording or a broadcast in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintance at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sound would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places or times individually chosen by them;

"computer" means an electronic or similar device having information processing capabilities;

"computer programme" means a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

"copyright" in relation to a work means the exclusive right, by virtue and subject to the provisions of this Act, to do, and authorise other persons to do, certain acts in relation to that work in Botswana or in any other country to which the relevant provisions of this Act extends;

"Copyright Arbitration Panel" means the Copyright Arbitration Panel established under section 33A of the Act;

"Copyright Society" means the Copyright Society of Botswana established under section 36A of the Act;

"dramatic work" includes a work of dance or mime;

"distribution" means the distribution to the public, for commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement, and **"distributing"** shall have a corresponding meaning;

"economic rights" means the rights derived as a consequence to the right to a copyright, the extent of which is provided for under section 7;

"expression of folklore" means a group-oriented and tradition-based creation of groups or persons reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means including-

- (i) folktales, folk poetry, and folk riddles;
- (ii) folk songs and instrumental folk music;
- (iii) folk dances and folk plays;
- (iv) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terra-cotta, mosaic, woodwork, metal-ware, jewellery, handicrafts, costumes, and indigenous textiles;

"fixation" means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through device;

"literary work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes-

- (a) a table of compilation; and
- (b) a computer programme;

"musical work" means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;

"neighbouring rights" means the rights neighbouring on copyright as provided for under section 23;

"owner of copyrights" means-

- (i) where the economic rights are vested in the author, the author;
- (ii) where the economic rights are originally vested in a person other than the author, that person;
- (iii) where the ownership of the economic rights has been transferred to another person, that person;

"performer" means a singer, musician or other person who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or expressions of folklore;

"performance" in relation to-

- (a) the rights conferred under Part IV, includes-
 - (i) a dramatic performance which includes dance and mime;
 - (ii) a musical performance;
 - (iii) a reading or recitation of a literary work;
 - (iv) a performance of a variety act or any similar presentation; that is, or to the extent that it is, a live performance, given by one or more persons; and
- (b) a literary, dramatic or musical work includes-
 - (i) delivery in the case of lectures, addresses, speeches and sermons; and
 - (ii) any mode of visual or acoustic presentation, including presentation by means of sound recording, film, broadcast or cable programme of the work;

"photographic work" means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique, chemical, electronic or other, by which such recording is made; a still picture extracted from an audiovisual work shall not be considered a "photographic work" but a part of the audiovisual work concerned;

"producer" of an audiovisual work or a sound recording, means the person who undertakes the initiative and responsibility for the making of the audiovisual work or sound

recording;

"public display" means the showing of the original or a copy of the work-

- (i) directly;
- (ii) by means of a film, slide, television image or otherwise on screen;
- (iii) by means of any other device or process; or,
- (iv) in the case of an audiovisual work, the showing of individual images non-sequentially, at a place or places where persons outside the normal circle of a family and its closest social acquaintance are or can be present, irrespective of whether they are or can be present at the same place and time or at different places and times or at different places or times, and where the work can be displayed without communication to the public;

"public lending" means the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes, by an institution, the services of which are available to the public, such as a public library or archive;

"public performance" means in the case of-

- (i) a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- (ii) of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and
- (iii) a sound recording, making the recording sounds audible, at a place or at places where persons outside the normal circle of the family and its closest acquaintance are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places and times, or different places or times, and where the performance can be perceived without the need for communication to the public;

"published" in relation to a work or a sound recording means copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies;

"rental" means the transfer of the possession of the original or a copy of a work or sound recording for a limited period of time for profit-making purposes;

"reproduction" means the making of one or more copies of a work or sound recording in any material form, including any permanent or temporary storage of the work or sound recording in electronic form;

"sound recording" means any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied; excluding a fixation of sounds and images, such as the sound track of an audiovisual work;

"work" means any literary or artistic work as provided for under sections 3 and 4(1);

"work of applied art" means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

"work of joint authorship" means a work to the creation of which two or more authors have contributed, provided the work does not qualify as a "collective work".

PART II

Copyright (ss 3-11)

3. Works protected

(1) A literary and artistic work shall not be considered as a work protected by copyright under this Act unless it is an original intellectual creation in the literary or artistic domain.

(2) Literary and artistic works under this Act include-

- (a) books, pamphlets, articles, computer programmes and other writings;
- (b) speeches, lectures, addresses, sermons and other oral works;
- (c) dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions;

- (d) stage productions of works referred to in paragraph (a) and of expressions of folklore;
- (e) musical works with or without accompanying words;
- (f) audiovisual works;
- (g) works of architecture;
- (h) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- (i) photographic works;
- (j) works of applied art; and
- (k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(3) The Minister may, by Order, add to or otherwise vary the works included under subsection (2).

4. Derivative works

(1) The following derivative works shall be protected as works-

- (a) translations, adaptations, arrangements and other transformations or modifications of works; and
- (b) collections of works, collections of mere data (data bases), whether in machine readable or other form, and collections of expression of folklore, provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work or expression of folklore incorporated in or utilized for the making of such a work.

5. Provisions as to State and Government department.

(1) In the case of any work made by or under the direction or control of the State or a Government department-

- (a) if apart from this section copyright would not subsist in the work, copyright shall subsist therein by virtue of this section; and
- (b) in any case, the State, subject to the provisions of this Part, be entitled to the copyright in the work.

(2) The State shall, subject to the provisions of subsection (3), be entitled to the copyright in every work first published in Botswana, if first published by or under the direction or control of the State or a Government department.

(3) The preceding provisions of this section shall have effect subject to any agreement made by or on behalf of the State or a Government department with the author of the work, whereby it is agreed that the copyright in the work, shall vest in the author or in another person designated in the agreement in that behalf.

(4) In this section "Government department" means any department of the Government of Botswana.

6. Protection to be for creation, and the kind of works not protected.

(1) A work shall be protected under the Act by the sole fact of its creation and irrespective of its mode or form of expression, as well as of its content, quality and purpose.

(2) Notwithstanding the provisions of sections 3, 4 and 5, no protection shall extend under this Act to-

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work;
- (b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof;
- (c) a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme; or
- (d) a sound recording or film which is, or to the extent that it is, a copy of a previous sound

recording or film.

7. Economic rights.

(1) Subject to the provisions of sections 13 and 21, the author or other owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the work-

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement or other transformation of the work;
- (d) the first public distribution of the original and each copy of the works by sale, rental or otherwise;
- (e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;
- (f) importation of copies of the work, even where the imported copies were made with the authorization of the author or other owner of copyright;
- (g) public display of the original or a copy of the work;
- (h) public performance of the work;
- (i) broadcasting of the work;
- (j) other communication to the public of the work.

(2) The rights of rental and lending under paragraph (e) do not apply to rental or lending of computer programmes where the program itself is not the essential object of the rental or lending.

8. Moral rights

(1) The author of a work shall, independently of any economic rights he may be entitled to, and even where he is no longer the owner of the said rights, have the right to-

- (a) have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;
- (b) not have his name indicated on the copies and in connection with any public use of his work, and the right to use a pseudonym;
- (c) object to any distortion, mutilation or other modification of, or other derogatory action in relation to his work which would be prejudicial to his honour or reputation.

(2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the author, provided that the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under item (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived.

(4) Following the death of the author, the person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

9. Original ownership of economic rights

(1) Subject to the other provisions of this Act, the original owner of economic rights is the author who has created the work.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights, provided that where a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in the part that he has created.

(3) In respect of a collective work, the person at the initiative and under the direction of whom or which the work has been created shall be the original owner of the economic rights.

(4) In respect of an audiovisual work, the original owner of the economic rights shall be

the producer, unless provided otherwise in a contract.

(5) The co-authors of the audiovisual work and the authors of the pre-existing works included in or adapted for the making of the audiovisual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works, can be subject of acts covered by the economic rights separately from the audiovisual work.

10. Duration of copyright

(1) Subject to the other provisions of this section, the economic and moral rights shall be protected during the life of the author and for fifty years after his death.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights shall be protected for fifty years from the date on which the work was made, first made available to the public or first published, whichever date is the latest.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for fifty years from the date on which the work was made, first made available to the public or first published, whichever date is the latest, provided that where the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2) shall apply, as the case may be.

(5) In the case of a work of applied art, the economic and moral rights shall be protected for twenty-five years from the making of the work.

(6) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

11. Presumption of authorship and representation of author

(1) The person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work.

(2) Where a pseudonym used leaves no doubt as to the identity of the author, subsection (1) shall be applicable to the pseudonym.

(3) In the case of an anonymous or pseudonymous work, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and in this capacity shall be entitled to exercise and enforce the moral and economic rights of the author:

Provided that such presumption shall cease to apply when the author reveals his identity.

PART III

Exceptions to Exclusive Right to Copyright (ss 12-21)

12. Exceptions to exclusive right to copyright

Notwithstanding the provisions of section 7, the following dealings with a work shall be permitted without the authorisation of the author or other owner of the copyright-

- (i) private reproduction for personal purposes, subject to section 13;
- (ii) quotations, subject to section 14;
- (iii) reproduction for teaching, subject to section 15;
- (iv) reprographic reproduction by libraries and archives, subject to section 16;
- (v) reproduction and adaptation of computer programmes, subject to section 17;
- (vi) reproduction, broadcasting and other communications to the public for informatory purposes, subject to section 18;
- (vii) temporary reproduction, subject to section 19;
- (viii) importation for personal purposes, subject to section 20; and
- (ix) display of works, subject to section 21.

13. Private reproduction for personal purposes

(1) Subject to subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorization of the author or owner of copyright, where the reproduction is made by any person exclusively for his own personal purposes.

(2) The permission granted under subsection (1) shall not extend to reproduction-

- (a) of a work of architecture in the form of building or other construction;
- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notation;
- (c) of the whole or a substantial part of a data base;
- (d) of a computer, except as provided in section 17; and
- (e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

14. Quotation

(1) The reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorization of the author or other owner of copyright, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose.

(2) Any quotation made in accordance with subsection (1) shall be accompanied by an indication of source and the name of the author, if his name appears in the work from which the quotation is taken.

15. Reproduction for teaching

(1) The following acts effected for purposes of teaching shall be permitted without authorization of the author, or other owner of copyright-

- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings, provided that reproduction is compatible with fair practice and does not exceed the extent justified;
- (b) the reprographic reproduction, for face-to-face teaching in education institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that-
 - (i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions; and
 - (ii) there is no collective licence available, offered by a collective administration organization of which the educational institution is or should be aware, under which such reproduction can be made.

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1).

16. Reprographic reproduction by libraries and archives

Any library or archive whose activities do not serve direct or indirect gain may, without the authorization of the author or other owner of copyright, make a single copy of the work by reprographic reproduction-

- (a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a person, provided that-
 - (i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research;
 - (ii) the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; and
 - (iii) there is no collective licence available, offered by a collective administration organization of which the library or archive is or should be aware, under which such copies can be made; or

- (b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive, provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

17. Reproduction and adaptation of computer programmes

(1) The reproduction, in a single copy, or the adaptation of a computer by the lawful owner of a copy of that computer programme shall be permitted without the authorization of the author or other owner of copyright, provided that the copy or adaptation is necessary-

- (a) for use of the computer programme with a computer for the purpose and extent for which the computer programme has been obtained; or
- (b) for archival purposes and for the replacement of the lawfully owned copy of the computer in the event that the said copy of the computer is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer programme shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer ceases to be lawful.

18. Reproduction broadcasting and other communication to the public

The following acts shall be permitted in respect of a work without the authorisation of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable-

- (a) the reproduction in a newspaper or other periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character, provided that this permission shall not apply where the right to authorise reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work;
- (b) the reproduction and the broadcasting or other communication to the public, for the purpose of reporting current events, of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose; or
- (c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified for the purpose of providing current information.

19. Temporary reproduction

The temporary reproduction of a work shall be permitted if all of the following conditions are met-

- (a) the reproduction is made in the process of a transmission of the work or an act of making a stored work perceptible;
- (b) it is caused by a person or entity that, by virtue of authorisation by the owner of the copyright or of operation of law, is entitled to make that transmission or make the work perceptible; and
- (c) it is an accessory to the transmission or making perceptible that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those referred to in paragraphs (a) and (b).

20. Importation for personal purposes

The importation of a copy of a work by any person for his own personal purposes shall be permitted without the authorization of the author or other owner of copyright.

21. Display of works

The public display of originals or copies of works shall be permitted without the authorization of the author, provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process, and provided further that the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

22. Assignment and licence of authors' rights

(1) Economic rights shall be assignable in whole or in part.

(2) Any assignment of an economic right, and any licence to do an act subject to authorization by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.

(3) An assignment in whole or in part of any economic right, or a licence to do an act subject to authorization by the author or other owner of copyright, shall not include or be deemed to include the assignment or licence of any other rights not explicitly referred to therein.

PART IIIA

Establishment of Copyright Office (ss 22A-22B)

22A. Establishment of Copyright Office

(1) There is hereby established an office to be known as the Copyright Office, which shall be situated in Gaborone and shall have branches in such other places as the Minister may, by Order published in the *Gazette*, designate.

(2) The Copyright Office shall be headed by the Copyright Administrator who shall be a public officer and who shall, subject to the direction of the Minister, be responsible for the administration of this Act, and who shall perform such functions and exercise such powers as may be conferred on him or her by this Act or any other enactment.

(3) The Copyright Office shall also have-

- (a) A Deputy Copyright Administrator; and
- (b) such other officers as may be necessary for the proper performance of its functions, and carrying out of its duties.

(4) The Copyright Administrator and other officers of the Copyright Office shall be appointed in accordance with the provisions of the Public Service Act.

22B. Functions of the Copyright Office

The Copyright Office shall-

- (a) be responsible for all matters affecting copyright in Botswana;
- (b) supervise the activities of the Copyright Society as provided for under section 36A of the Act;
- (c) advise Government and its agencies on all matters pertaining to copyright;
- (d) monitor the position of Botswana in relation to international conventions, treaties or agreements relating to copyright, and advise Government thereon;
- (e) advise Government on the negotiation, conclusion and implementation of bilateral and multilateral agreements on copyright between Botswana and other countries;
- (f) organise out-reach and awareness creation programmes to inform, educate and sensitise the public on matters relating to copyright;
- (g) maintain an effective database on copyright matters and on authors and their works;
- (h) maintain a register of works published in Botswana;
- (i) issue a licence, prescribed by the Minister, for the operation of the Copyright Society;
- (j) administer the fund established under section 35G (2); and
- (k) be responsible for such matters related to copyright, as the Minister may, from time to time, direct for the better carrying out of the purposes and provisions of this Act.

PART IV

Protection of Neighbouring Rights (ss 23-28)

23. Neighbouring rights

In this Part "neighbouring rights" means the intellectual property rights provided for the protection of the legal interests of certain persons and legal entities who either contribute to making works available to the public or produce subject matter which, will not qualify as "works" under the general understanding of copyright, but who, nevertheless, express creativity or technical and organisational skill sufficient to justify recognition of their contribution as deserving of protection; and such rights include the rights of performers, producers of sound recordings and broadcasting.

24. Acts requiring authorization of performers

(1) Subject to section 28, a performer shall have the exclusive right to carry out or to authorize any of the following acts-

- (a) the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication-
 - (i) is made from fixation of the performance, other than fixation made under the terms of section 28; or
 - (ii) is a re-broadcasting made or authorized by the organization initially broadcasting the performance;
- (b) the fixation of his unfixed performance;
- (c) the reproduction of a fixation of his performance;
- (d) the first making available to the public of a fixation of his performance, or copies thereof, through sale or other transfer or ownership;
- (e) rental to the public or public lending of a fixation of his performance, or copies thereof irrespective of the ownership of the copy rented; or
- (f) the making available to the public of his fixed performance, by wire or wireless means, in such way that members of the public may access them from a place or at a time individually chosen by them.

(2) Once the performer has authorized the incorporation of his performance in an audiovisual fixation, the provisions of subsection (1) shall have no further application.

(3) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(4) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favourable for them in respect of their performances.

(5) The provisions of subsections (2), (3) and (4) of section 8 apply *mutatis mutandis* to the rights granted under subsection (3) of this section.

(6) The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed in a phonogram, or in the absence of such fixation, from the end of the year in which the performance took place.

25. Acts requiring authorization of producers of sound recordings

(1) Subject to the provisions of section 28, a producer of a sound recording shall have the exclusive right to carry out or to authorize any of the following acts-

- (a) direct or indirect reproduction of the sound recording;
- (b) importation of copies of the sound recording, even where the imported copies were made with the authorization of the producer;
- (c) adaptation or other transformation of the sound recording;
- (d) rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent;
- (e) the first making available to the public by sale or other transfer of ownership, of the

- original copies of the sound recording;
- (f) the making available sound recordings, by wire or wireless means, to enable members of the public to access them from a place or at a time individually chosen by them.

(2) The rights under subsection (1) shall be protected from the publication of the sound recording until the end of the fiftieth calendar year following the year of publication or if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

26. Equitable remuneration for use of sound recordings

(1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performer or performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

27. Acts requiring authorization of broadcasting organizations

(1) Subject to section 28, a broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts-

- (a) the re-broadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast; or
- (d) the reproduction of a fixation of its broadcast.

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.

28. Limitations on protection

Sections 24, 25, 26 and 27 shall not apply where the acts referred to in those sections are related to-

- (a) the use by a person exclusively for his own personal purposes;
- (b) using short excerpts for reporting current events to the extent justified for the purpose of providing current information;
- (c) use solely for the purpose of face-to-face teaching activities or for scientific research; or
- (d) cases where, under Part III, a work can be used without the authorization of the author or other owner of copyright.

PART V

Enforcement of Rights (ss 29-33A)

29. Conservatory measures to enforce rights

(1) Subject to subsection (2) where a complaint of the contravention of the provisions of this Act is made and it is considered that a document, book or other object connected to any investigation in regard to the complaint, is being concealed within specified premises, a Police Officer or such other person as the Minister may, by Order, appoint and grant investigating powers, shall enter the premises to conduct a search and seize any item found within the premises.

(2) The Police Officer or the person appointed by the Minister under subsection (1) (hereinafter both referred to as "the investigating officer") shall not enter, conduct a search or seize any item in terms of subsection (1) unless he has obtained-

- (a) the consent in writing of the owner of the premises or the person in charge of the

- premises; or
- (b) a search warrant.

(3) The court shall grant the application for a search warrant if it appears, on information given on oath or affirmation, that there are reasonable grounds to suspect that-

- (a) there are works that infringe the rights protected under the Act in the premises;
- (b) there is in the premises equipment or other device specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means") or
- (c) a document, book or other object which may afford evidence of such contravention of the provisions of this Act is within those premises.

(4) Where a Chief or Senior Magistrate is satisfied from information given on oath or affirmation by the investigating officer, that urgent action is required to obtain evidence pertaining to the contravention of the provisions of this Act, which evidence is likely to be concealed or destroyed, the Magistrate may dispense with any procedural requirements and grant a search warrant to the investigating officer at such time and place and under such conditions as the urgency of the matter may require.

(5) A search warrant granted by the court shall-

- (a) authorise the investigating officer mentioned in the warrant to enter the premises identified in the warrant to conduct searches, examinations, take extracts or copies, seize any item or to do any other thing that may assist with the investigation;
- (b) be executed by day, unless the court authorises its execution by night; and
- (c) be in force until it is executed, cancelled by the court or a period of one month from the date of its issue expires, whichever occurs first.

(6) The investigating officer executing a search warrant under this section shall, before such execution or upon demand by any person whose rights may be affected-

- (a) present his identification card; and
- (b) hand to such person a copy of the warrant.

(7) An investigating officer shall not seize any item found within the premises being searched in accordance with the provisions of this section unless he has handed the person from whose possession or charge the item is being seized, a receipt of the seizure in the prescribed form.

(8) A person from whose possession or charge a document, book or other object has been seized shall, as long as it is in the possession or charge of the investigating officer concerned, be allowed on request to make copies or to take extracts from it at any reasonable time at his own expense and under the supervision of that investigating officer or other authorised person in the service of the Office.

(9) A person shall not be entitled to refuse to answer any question or to produce any document, book or other object on the ground that such answer, document, book or other object would incriminate him.

(10) Subject to subsection (11) incriminating evidence, arising out of any answer, document, book or other object a person may present to an investigating officer in answer to an enquiry made by the investigating officer, shall not be admissible in any criminal trial against that person.

(11) Any person who-

- (a) obstructs or hinders the investigating officer in the performance of his functions in terms of this section; or
 - (b) knowingly makes a false statement or gives a false answer to any enquiry,
- shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding P2,000 or to imprisonment for a term not exceeding 12 months, or to both.

30. Civil remedies

(1) The court shall, subject to any other Act of Parliament, and on such terms as it may deem reasonable, have the authority to-

- (a) grant injunctions to prohibit the committing, or continued committal, of infringement of any right protected under this Act;
- (b) order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under this Act, where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to, such copies.
- (c) order payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing party, that are attributable to the infringement; and
- (d) award exemplary damages where it finds that the infringement is prejudicial to the honour or reputation of the person whose rights were infringed.

(2) In addition to any civil remedy that may be ordered by the court against any person who has infringed any right protected under this Act, the court shall have the authority to order the destruction or other reasonable disposition of infringing copies, where they exist, and their packaging outside the channels of commerce in such a manner as to avoid harm to the holder of the right, unless the owner of the right requests otherwise:

Provided that copies and their packaging which were acquired by a third party in good faith shall not be so destroyed.

(3) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements.

(4) Any person who in contravention of the provisions of subsections (2) and (3), fails to carry out the order of the court for the destruction or other reasonable disposition of the infringing copies or implements, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding P10,000 or to imprisonment for a term not exceeding five years or to both.

31. Criminal sanctions

(1) Any person who contravenes the provisions of this Act so as to infringe a right protected under this Act for profit, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding P20,000 or to imprisonment for a term not exceeding ten years or to both.

(2) Any person convicted of a second or subsequent offence shall be fined a minimum of P30,000 or a maximum of P5,000,000 or be imprisoned for a term not exceeding ten years, or to both.

32. Powers of Customs officials

Any goods imported into the country that are in contravention of the provisions of this Act, may be placed under an embargo, destroyed or otherwise disposed of as provided for under sections 119 and 120 of the Customs and Excise Duty Act.

33. Measures, remedies and sanctions against abuses in respect of technical means of protection and rights management information

(1) The following acts shall be considered unlawful and, in the application of the civil and criminal remedies under this Part, shall be assimilated to infringements of the rights protected under this Act-

- (a) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work, sound recording or a broadcast, or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means"); or

- (b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program;
- (c) the removal or alteration of any electronic rights management information without authority;
- (d) the distribution import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, sound recording or broadcasts, knowing or having reason to know that electronic rights management information has been removed or altered without authority.

(2) In the application of civil and criminal remedies under this Part, any illicit device and means referred to in subsection (1) and any copy from which rights management information has been removed, or in which such information has been altered, shall be assimilated to infringing copies of works, and any illicit act referred to in subsection (1) shall be treated as an infringement of copyright or related rights to which the civil remedies and criminal sanctions provided for in this Part are applicable.

(3) In this section, "rights management information" means any information which identifies the author, the work, the producer of the sound recording, the broadcaster, the performer, the performance, or any owner of a right under this Act, any information about the terms and conditions of use of the work or the performance, and any numbers or codes that represent such information, when any of these items of a work or a fixed performance, appears in connection with the broadcasting, communication to the public or making available to the public of a work or a fixed performance.

33A. Copyright Arbitration Panel (1) Notwithstanding the other provisions of this Act, there shall be appointed, by the Minister, an arbitration panel which shall be known as the Copyright Arbitration Panel, for the settlement of disputes under this Act.

(2) The Panel shall be composed of not less than three but not more than five persons, one of whom shall be a person who is enrolled to practice as an attorney in the High Court of Botswana, and has been an attorney for not less than seven years, or a person who has held judicial office in Botswana.

(3) The person referred to under subsection (2) shall be the chairperson of the Panel.

(4) The other members of the Panel shall be persons who are knowledgeable in the field of copyright.

(5) No person shall be appointed as a member of the Panel, nor shall any person so appointed sit in any hearing or proceeding of the Panel where he or she, his or her spouse or business partner, or his or her employer or any person closely associated with him or her, has a pecuniary interest in any matter which comes before the Panel for determination.

PART VI

General Provisions (ss 34-39)

34. Application of Act to works protected under Cap 68:01

(1) The provisions of this Act shall apply to works, performances, sound recordings and broadcasts protected under the Copyright Act (which is repealed under section 38 and is hereinafter referred to as "the repealed Act") before the commencement of this Act, provided that the term of protection had not expired under the repealed Act or under the legislation of the country of origin of such works, performances, sound recordings or broadcasts that are to be protected under an international treaty to which the Republic of Botswana is party.

(2) The provisions of this Act shall not affect contracts on works, performances, sound recordings and broadcasts concluded before the commencement of the Act.

35. Scope of application

(1) The provisions of this Act concerning the protection of literary and artistic works shall apply to-

- (a) work of authors who are nationals of, or have their habitual residence in Botswana;
- (b) works first published in Botswana, and works first published in another country and also published in Botswana within thirty days of their first publication, irrespective of the nationality or residence of their authors;
- (c) audiovisual works, the producer of which has his headquarters or habitual residence in Botswana;
- (d) works of architecture erected in Botswana and other artistic works incorporated in a building or other structure located in Botswana.

(2) The provisions of this Act shall also apply to works that are protected in Botswana by virtue of and in accordance with any international convention or other international agreement to which the country is party.

(3) The provisions of this Act on the protection of performers shall apply to-

- (a) performers who are nationals of Botswana;
- (b) performers who are not nationals of Botswana but whose performances-
 - (i) take place on the territory of Botswana;
 - (ii) are incorporated in sound recordings that are protected under this Act; or
 - (iii) have not been fixed in a sound recording but are included in broadcasts qualifying for protection under this Act.

(4) The provisions of this Act on the protection of sound recordings shall apply to-

- (a) sound recordings the producers of which are nationals of Botswana;
- (b) sound recordings first fixed in Botswana; and
- (c) sound recordings first published in Botswana.

(5) The provisions of this Act on the protection of broadcasts shall apply to-

- (a) broadcasts of broadcasting organizations the headquarters of which are situated in Botswana; and
- (b) broadcasts transmitted from transmitters situated in Botswana.

(6) The provisions in this Act shall also apply to performers, producers of sound recordings and broadcasting organizations protected by virtue of and in accordance with any international convention or other international agreement to which Botswana is party.

35A. Security devices (1) Every sound and audiovisual recording made available to the public by sale, rental, lending or distribution in any other manner to the public for commercial purposes in Botswana shall have affixed, to it, such security device as may be prescribed.

(2) The security device shall be issued by the Copyright Office, upon payment of the price, to a person who makes available to the public, or intends to make available to the public, a sound or audiovisual recording by any method specified in subsection (1).

(3) The security device shall be issued by the Copyright Office upon proof, by the person referred to in this section, that he or she has been authorised by the owner of the copyright in the work to so sell, rent, lend or otherwise distribute the work.

(4) The security device shall be evidence that the work to which it is affixed is not a pirated work.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding P20,000 or to imprisonment for a term not exceeding two years, or to both.

(6) Any person who, without the permission of the Copyright Office-

- (a) is in possession of, or reproduces, a security device; or
- (b) is in possession of any machine, instrument or contrivance intended to be used to produce or reproduce a security device,

shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding P50,000 or to imprisonment for a term not exceeding five years, or to both.

35B. Affixation of security device (1) The security device shall be affixed-

- (a) in the case of a sound or audio visual recording produced or manufactured in

- Botswana, at the Copyright Office or such other place as the Copyright Office may, from time to time, designate by notice published in the *Gazette*; and
- (b) in the case of a sound or audio visual recording which is imported, but is not imported exclusively for personal use, at the relevant office of the Department of Customs and Excise before it is released for commercial use.

(2) The security device shall be affixed to every cassette, disc or other medium in which a sound recording or audio visual recording is embodied in such a manner as to make the device visible to prospective purchasers.

35C. Price of security device The price of a security device shall be as fixed from time to time by the Copyright Office after consultation with the Copyright Society.

35D. Accreditation of producers (1) Every person engaged in the reproduction of sound and audio visual recordings shall, for the purpose of affixing the security device, apply, in such form as may be prescribed, to the Copyright Office for accreditation as a producer.

(2) No person shall be accredited unless he or she-

- (a) proves, to the satisfaction of the Copyright Office, that he or she has been authorised by the owner of the copyright in the work to reproduce the work referred to in subsection (1); and
- (b) has paid the application fee prescribed.

(3) Upon being accredited, the applicant shall be issued with a certificate of accreditation, in such form as may be prescribed, by the Copyright Office, and such accreditation shall be renewed annually.

35E. Accreditation of importers (1) Any person who imports or intends to import, into Botswana, any sound or audiovisual recording for the purpose of sale, rental, lending or distribution in any other manner to the public for commercial purposes shall apply in such form as may be prescribed to the Copyright Office for accreditation as an importer authorised to use a security device in connection with such works.

(2) Upon being accredited, the applicant shall be issued with a certificate of accreditation, in such form as may be prescribed, by the Copyright Office.

(3) The Copyright Office shall issue a certificate of accreditation under this section only where the applicant produces valid authorisation from the owner of the copyright in the works permitting the importation of such works into Botswana.

(4) Any person who, without the accreditation of the Copyright Office, imports any work specified in subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding P50,000 or to imprisonment for a term not exceeding five years, or to both.

35F. Keeping of books and returns Every accredited person shall keep such books and make such returns as may be required, and in the manner prescribed by the Minister.

35G. Levy on technical devices (1) There shall be imposed on all imported and locally manufactured blank sound and audio visual carriers, compact discs and equipment capable of being used to copy protected materials, a levy of such sum as may be prescribed by the Minister.

(2) The levy shall be collected by the Department of Customs and Excise and shall be deposited in a fund to be established by the Minister of Finance and Development Planning for the development of authors and publishers of works.

36. Application of International Treaties

The provisions of any international treaty in respect of copyright and related rights to which the Republic of Botswana is a party shall apply to matters dealt with under this Act.

36A. Establishment of Copyright Society (1) There shall be established, for the various categories of works protected under this Act, a collective administration body to be known as the Copyright Society of Botswana.

(2) The Copyright Society shall be a non-profit making company limited by guarantee, and shall be responsible for-

- (a) the negotiation and granting of licences in written agreement with the owners of copyright for:
 - (i) the adaptation of works, performances and sound recordings,
 - (ii) the insertion of works, performances or sound recordings in other scopes,
 - (iii) the use of works for publicity purposes;
 - (b) setting rates for royalties in accordance with acceptable international standards; and
 - (c) the collection and distribution of royalties to appropriate owners of copyright.
- (3) The Copyright Society shall-
- (a) represent the owners of the copyright in the various categories of works protected under this Act; and
 - (b) put in place rules and regulations, approved by the Copyright Office, which contain such provisions as are necessary to ensure the protection of the interests of its members.

36B. Duties of Copyright Society (1) The Copyright Society shall, as soon as reasonably practicable after the end of each financial year, submit, to the Copyright Office-

- (a) a report of its operations and performance during the year in question;
- (b) a copy of its audited financial statements in respect of that year; and
- (c) a copy of such other reports as may be requested by the Copyright Office.

(2) The Copyright Society shall distribute royalties on an equitable basis, approved by the Copyright Office, to its members.

37. Regulations

(1) The Minister may make regulations providing for any matter which under this Act is to be prescribed or for the better carrying out of the purposes and provisions of this Act.

(2) Without prejudice to the generality of the subsection (1), the Minister may make Regulations to-

- (a) establish, constitute and provide the functions of a Copyright Council to administer the Act and to regulate the rights protected under the Act;
- (b) provide for the setting up of a Copyright Society and such other body of persons necessary to promote the rights protected under the Act.

38. Repeal of Cap 68:01

The Copyright Act is hereby repealed.

39. Savings

(1) Nothing in this Act shall affect the operation of any rule relating to breaches of trust or confidence.

(2) Nothing in this Act shall affect the right of the State or of any person deriving title from the State to sell, use or otherwise deal with articles forfeited under the laws relating to customs or excise, including any article forfeited by virtue of this Act or the repealed Act.

CHAPTER 72:01

BOTSWANA POSTAL SERVICES

ARRANGEMENT OF SECTIONS

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

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

[Date of Commencement: 6th October, 1989]

PART I

Preliminary (ss 1-2)

1. Short title and commencement

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

2. Interpretation

In this Act, unless the context otherwise requires-

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

"franking machine" means a machine for the purpose of making impressions on postal

articles to denote payment of postage and includes any meter and any franking or date stamping die used in connection with postal franking;

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

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

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

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

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

- (a) the collection, transmission and delivery of postal articles by whatever means of transportation from one place to another whether within or outside Botswana;
- (b) the issue of postage stamps and the use of franking machines; and
- (c) the issue or repayment of money orders or postal orders for the remittance of money through the Botswana Postal Services; and

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

PART II

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

3. Establishment of Botswana Postal Services

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

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

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

4. Establishment of Board

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

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

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

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

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

5. Resignation and removal from office

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

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

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

6. Tenure of office

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

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

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

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

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

7. Payment of members

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

PART III

Meetings and Proceedings of Board (ss 8-9)

8. Meetings

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

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

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

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

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

members of the Board:

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

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

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

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

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

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

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

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

9. Signification of documents

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

PART IV

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

10. Appointment of officers and employees

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

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

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

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

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

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

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

(c) The appointment and dismissal of all other staff shall be made by the Director

General or such senior officer as he may delegate to perform this function.

(7) The Board may-

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

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

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

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

11. Delegation to committee

The Board may, by resolution, delegate to any committee appointed by it the exercise of any of the powers which it is authorized by this Act to exercise, generally or in any particular case.

PART V

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

12. Functions and powers

(1) The functions of the Post shall be-

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

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

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

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

- (h) invest from time to time, in such manner as it may deem fit, such moneys held by it as may be surplus to its immediate requirements, subject to the approval in writing of the Minister for the time being responsible for finance;
- (i) insure with any company or person against any loss, damage, risk or liability which the Post may incur;

- (j) purchase or sell any materials and stores used in the performance of its functions;
- (k) sell, hire or otherwise dispose of any apparatus used in connection with Postal services; and
- (l) carry on any activity which is reasonably requisite or convenient for or in connection with the discharge of its functions under this Act.

13. Exclusive privilege of the Post

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

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

14. Co-operation with authorities

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

15. Research and records

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

16. Power of Minister to give directions

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

PART VI

Finances (ss 17-21)

17. Principles of financial operations

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

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

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

18. Fixing of tariffs

(1) The Board shall, with the approval of the Minister, which approval shall not be unreasonably withheld, prescribe the tariffs or other charges for which it provides postal

services so as to ensure that it is able to comply with the provisions of section 17.

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

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

19. Borrowing powers

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

(2) The Post may charge its assets, undertakings, and revenues with the repayment of any money borrowed together with interest thereon and may issue debentures, bonds or other securities in order to secure the repayment of any money borrowed together with interest thereon and may do all other things necessary in connection with or incidental to such borrowings as are authorized by this section, subject to the approval of the Minister for the time being responsible for finance.

20. Vesting of property in the Post

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

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

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

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

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

amount or amounts credited to the Consolidated Fund for that purpose.

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

21. Accounts and audit

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

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

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

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

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

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

PART VII

General (ss 22-28)

22. Annual report

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

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

23. Compulsory acquisition of land

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

24. Resettlement measures

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

25. Compensation for loss or damage

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

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

26. Power to call for information

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

27. Power of Board to make bye-laws

The Board may, with the approval of the Minister, make bye-laws for any purpose connected with its powers, functions and duties under this Act, and may impose penalties for breach of any such bye-laws.

28. Transitional provisions

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

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

PART VIII

Transmission of Postal Articles (ss 29-42)

29. Registration of postal articles

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

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

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

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

For the purposes of this Act-

- (a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed;
- (b) the placing of a postal article in a pillar box or other receptacle provided or the purpose by or with the approval of the Post, or the delivery of a postal article to an officer or other person authorized by the Director General to receive postal articles of that description, shall be deemed to be delivery to a post office;

- (c) the delivery of a postal article at the house or office of the person to whom the article is addressed or to his servant or agent or other responsible person or at the address specified on such article shall be deemed to be delivery to the person addressed; and
- (d) delivery into a private box or private bag shall be deemed to be personal delivery to the addressee.

31. Redirection and interception of postal articles

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

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

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

- (a) at the request of either the sender or the addressee thereof, shall be liable to an additional charge equal to the ordinary rate of postage from the place of the original address to the place of the new address and any article which under the provisions of this Act may be returned to the sender thereof shall if reposted be liable again to postage;
- (b) for delivery to the sender or addressee at the office in which stoppage is effected, shall be liable to such special fee as may be prescribed.

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

32. Articles deemed to be posted in contravention of Act

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

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

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

Any postal article which is-

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

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

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

34. Articles other than letters may be opened for examination

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

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

35. Treatment of unclaimed letters in Returned Letter Office

Any postal article originally posted within Botswana which is sent to the Returned Letter Office in accordance with section 33, or which is undelivered, shall be opened by an officer authorized by the Director General for that purpose and shall, unless it contains any valuable or saleable enclosure or has in the opinion of the Director General been posted in contravention of

this Act or with intent to evade payment of the postage properly chargeable thereon, be returned to the sender thereof if his name and address are known, and may, if the sender refuses to receive it or if his name and address are not known, be sold or destroyed.

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

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

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

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

(4) If no application under subsection (3) is made within 3 months after the sending of a notice under subsection (2), or if the postal article in question or the contents thereof has in the opinion of the Director General been posted in contravention of this Act or with intent to evade payment of any charge properly payable thereon, such article and its contents shall (without affecting the liability to any penalty or punishment to which the sender may be subject), be destroyed, sold or otherwise disposed of as the Director General may direct.

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

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

37. Sender of undelivered article liable for all charges due

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

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

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

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

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

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

40. Articles addressed to insolvent person

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

41. Articles addressed to deceased person

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

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

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

PART IX

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

43. Remittance of money through the Post

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

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

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

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

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

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

PART X

Offences and Penalties (ss 46-61)

46. Forging stamps, dies, etc.

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

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

paper provided, used or made for any postage stamp or for any other purpose of this Act or by any personal authority;

- (d) makes or assists in making or has in his custody or possession any paper in the substance of which appear any word, letter, figure, mark, line or device peculiar to paper provided, used or made for any postage stamp or for any other purpose of this Act or by any postal authority, or makes, purchases, sells, disposes of or receives or has in his custody or possession any paper provided or made for the purposes of being used for any postage stamp or for any other purposes of this Act or by any postal authority before the same has been issued for public use;
- (e) makes use of any stamp, dye, plate or paper engraved or made for the purposes of this Act or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any paper or material whatever bearing an impression or mark of any such stamp, dye, plate or paper; or
- (f) makes on any envelope, wrapper, card, form or paper any mark in imitation of or similar to or purporting to be any official stamp or mark used for the purposes of this Act or by any postal authority, or any word, letter, device or mark which signifies or implies or may reasonably be regarded as signifying or implying that any article bearing such word, letter, device or mark has been or is entitled to be sent through the post,

shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 5 years, and any stamp, dye, plate, paper, instrument or other material found in the possession of such person in contravention of this section shall be seized and forfeited to the State.

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

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

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

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

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

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

48. Offence in connection with carriage and delivery of mail

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

- (a) negligently loses or wilfully detains, delays, misdelivers or omits to dispatch any mail (whether or not the same is afterwards recovered or delivered) or communicates or divulges the contents of any postal article;
- (b) while in charge of any mail, leaves it, or suffers any person, not being the guard or person employed for that purpose, to travel in the place appointed for the guard in or

upon any conveyance carrying the mail, or to travel in or upon any such conveyance not authorized to carry passengers or upon any horse or other animal conveying that mail;

- (c) is guilty of carelessness, negligence or any misconduct where the safety of any mail is endangered;
- (d) while in charge of any mail is intoxicated or loiters or wilfully misspends or loses time so as to retard the arrival of the mail at its proper destination within the time fixed for its arrival, or does not use due care and diligence to safely convey the mail at the due rate of speed;
- (e) gives false information of any assault or attempt at robbery upon him; or
- (f) without due authority, collects, receives, conveys or delivers any postal article otherwise than in the ordinary course of post,

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

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

(1) Any person who-

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

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

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

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

(1) Any person who-

- (a) sends in or with any postal article or puts into or against any post office any fire, match or light or any explosive, dangerous, filthy, noxious or deleterious matter or thing or any matter or thing which is likely to injure or damage any post office, person or mail;
- (b) steals any mail or steals from any mail or post office or from the possession or custody of any officer, or for any purpose embezzles or fraudulently secretes or destroys any

- postal article or any of the contents thereof;
- (c) receives any mail or postal article or any of the contents thereof knowing the same to have been stolen, embezzled or fraudulently secreted or to have been sent or intended to be sent by post; or
 - (d) stops any mail with intent to rob or search such mail, shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 7 years.

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

51. Tampering with mail

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

52. Wilfully obstructing or delaying mail

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

53. Wilfully opening or delaying postal articles

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

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

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

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

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

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

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

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

(1) Any person, not being an officer, who without the express permission of the Director General or of an officer having authority to give permission, enters any part of a post office in which is carried on any of the operations in respect of which an oath of secrecy is required to be taken by officers, or whilst in any post office, wilfully obstructs the course of business of the post or behaves in a disorderly manner or who wilfully obstructs, hinders or delays any officer in the execution of his duty, or who fails to comply with any regulations which have been issued, or

by-laws to secure the comfort and convenience of the public or the safety of the premises, and which state that failure to comply therewith shall be an offence, shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

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

56. Frauds in connection with money orders, etc.

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

57. Personating officers of the Post with fraudulent intent

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

58. False declaration

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

59. Attempting to commit or procuring commission of offences

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

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

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

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

61. Evidence: acceptance of official marks

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

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

PART XI
Miscellaneous (ss 62-65)

62. Limitation of liability

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

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

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

63. Detention of postal articles

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

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

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

64. Regulations

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

65. Repeal and savings

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

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

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