

AIR BOTSWANA ACT, 1988

No. 4



of 1988

ARRANGEMENT OF SECTIONS

SECTION

PART I Preliminary

1. Short title
2. Interpretation

PART II Establishment, Constitution and Membership of Corporation

3. Establishment of Corporation
4. Composition of Corporation
5. Resignation and removal from office
6. Tenure of office
7. Payment of members

PART III Meetings and proceedings of Board

8. Meetings
9. Signification of documents

PART IV Officers, employees and duties of Corporation

10. Appointment of officers and employees
11. Delegation to committee

PART V Functions, powers and duties of Corporation

12. Functions and powers
13. Exclusive privilege of Corporation
14. Co-operation with authorities
15. Research and records
16. Power of Ministers to give directions

PART VI Finances

17. Principles of financial operations
18. Fixing of tariffs
19. Borrowing powers
20. Vesting of property in Corporation
21. Liability to pay tax etc.
22. Accounts and audit

PART VII *General*

23. Annual report
24. Compulsory acquisition of land
25. Resettlement measures
26. Compensation for loss or damage
27. Power to call for information
28. Power to make bye-laws
29. Protection from personal liability
30. Power to make regulations
31. Transitional provisions

An Act to provide for the establishment of a Corporation to be known as Air Botswana for the provision, development, operation and management of air transport services and for matters connected therewith or incidental thereto

Date of Assent: 18.4.88.

Date of Commencement: 1.4.88.

ENACTED by the Parliament of Botswana.

PART I *Preliminary*

Short title

1. This Act may be cited as the Air Botswana Act, 1988 and shall be deemed to have come into operation on 1st April, 1988..

Inter-pretation

2. In this Act, unless the context otherwise requires —

“aerial work” means a service, other than an air transport service, which is performed by means of an aircraft for payment or material advantage and includes any letting out on hire of an aircraft without pilot or crew;

“air transport services” means services for the carriage of passengers or goods which are performed by means of aircraft for payment or material advantage;

“Board” means the Board of Management appointed under section 4;

“Corporation” means the body corporate known as Air Botswana established by section 3;

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

“former airline” means the subsidiary private limited company wholly owned by Air Botswana Holdings (Pty) Limited and incorporated under the name of Air Botswana (Pty) Limited under the Companies Act;

Cap. 42:01

“former owners” means Botswana Development Corporation Limited and its wholly owned subsidiary private company under the name of Air Botswana Holdings (Pty) Limited both of which are incorporated under the Companies Act;

Cap. 42:01

“prescribed” means prescribed by regulations made under section 30.

PART II *Establishment, constitution and membership of Corporation*

3. (1) There is hereby established a Corporation to be known as Air Botswana.

Establishment of Corporation

(2) Air Botswana shall be a body corporate capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

4. (1) The governing body of the Corporation shall be a Board of Management consisting of the following members appointed by the Minister —

Composition of Corporation

- (a) the Chairman;**
- (b) the General Manager of the Corporation appointed under section 10, *ex officio*; and**
- (c) not less than 5 or 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 Corporation.**

(2) 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 Corporation;**
- (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; or**
- (d) has been convicted in any country of an offence involving dishonesty.**

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

Resignation and removal from office

(2) A member of the Board may be removed from membership thereof 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(1);**
- (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.

Tenure of office

6. (1) A member of the Board, other than the Chairman and the General Manager, 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 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 may be reappointed for any further period of 3 years at a time.

(3) The Board shall once in every year elect from among its members (other than the *ex-officio* member) a Vice-Chairman who shall hold office as Vice-Chairman for a period of one year.

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

Payment of members

7. 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*

Meetings

8. (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 General Manager shall not count towards the constitution of the quorum.

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

Provided that the General Manager 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 thinks fit, request the attendance of any person to act as adviser at any meeting of the Board, and that person while so attending shall have all the powers of a member except that he shall not vote on any question and his presence at the meeting shall not count towards the constitution of a quorum.

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

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

(a) the meetings of the Board;

(b) the conduct of its business and other operations in carrying out its functions; and

(c) the duties of its officers, employees and agents.

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

Signification
of
documents

PART IV Officers, employees and agents of Corporation

10. (1) The Corporation shall have a General Manager who shall be appointed by the Minister upon such terms and conditions as may be determined by the Corporation.

Appoint-
ment of
officers and
Employees

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

(3) The General Manager of the Corporation shall, subject to such directions on matters of general policy as may be given by the Corporation, be charged with the direction of the business of

the Corporation and of its administration and organisation, and the control of the employees of the Corporation.

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

(5) The General Manager may delegate to any senior officers of the Corporation the exercise of any powers which he is authorized to exercise under this Act.

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

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

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

(7) The Corporation 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 may be transferred or seconded to the Corporation or may otherwise give assistance thereto.

Delegation
to committee
etc

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

PART V Functions, powers and duties of Corporation

Functions
and powers

12. (1) The functions of the Corporation shall be —

(a) the provision of air transport services within, to or from Botswana whether domestic or international;

(b) to carry out aerial work within or outside Botswana.

(c) to carry out such other operations as may appear to the Corporation to be conducive or incidental to the attainment of all or any of its objectives under this Act or any other law.

(2) The Corporation 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) operate such air routes as are approved by the Minister from time to time;
- (b) 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 Corporation, or any agent or contractor appointed or employed by the Corporation;
- (c) enter into agreements in connexion with the operation of air transport services;
- (d) supply, sell or market air transport services to all persons desiring such services;
- (e) enter into such contracts as may be necessary for the performance of its functions and duties;
- (f) 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;
- (g) 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;
- (h) 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 Corporation may not sell any of its immovable property without the approval in writing of the Minister for the time being responsible for Finance;
- (i) 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;
- (j) insure with any company or person against any losses, damages, risks or liabilities which the Corporation may incur;
- (k) purchase or sell any materials and stores used in the performance of its functions;
- (l) sell, hire or otherwise dispose of any apparatus used in connexion with air transport services;
- (m) carry on any activity which is reasonably requisite or convenient for or in connexion with the discharge of its functions under this Act.

13. The Minister may by notice published in the Gazette award the Corporation an exclusive concession as the national air carrier for the operation of scheduled domestic and international

Exclusive
privilege
of
Corporation

air transport services for such period as the Minister may determine.

Co-operation
with
authorities

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

Research
and records

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

Power of
Minister
to give
directions

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

PART VI *Finances*

Principles
of financial
operations

17. (1) It shall be the duty of the Corporation to conduct its affairs on sound commercial lines and, in particular, so to carry out its functions under this Act and so prescribe the charges payable in respect of the provision by the Corporation of air transport services as to ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable return measured by taking its net operating income as a percentage of the fair value of its fixed assets in operation plus an appropriate allowances for its working capital.

(2) For the purposes of this section "net operating income" means the amount of income remaining after subtracting from the total operating revenues all charges which in accordance with generally acceptable accounting principles are chargeable to revenue accounts, including appropriate provisions for depreciation of assets, adequate maintenance and taxes, but before deducting interest and other charges on borrowing or taking into account non-operating income and expenditure.

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

(a) to meet interest payments on borrowings;

(b) to provide for repayments to be made each year in respect of loans incurred by the Corporation to the extent to which

such repayments exceed the year's provision for depreciation charged to revenue accounts;

- (c) to provide a reasonable proportion of the funds needed for expanding the Corporation's activities and improving its services;
- (d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Corporation deems it necessary to establish such reserves, and
- (e) to make reasonable dividend payments to the Government in respect of its equity interest in the Corporation if and to the extent deemed appropriate by the Corporation, 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 Corporation.

18. (1) The Corporation shall, with the approval of the Minister, which approval shall not unreasonably be withheld, prescribe the tariffs at which it provides air transport services so as to ensure that it is able to comply with the provisions of section 17.

Fixing of tariffs

(2) The Corporation may prescribe different tariffs or methods of charge for different classes or categories of service and for different areas or places.

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

19. (1) In order to enable the Corporation 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.

Borrowing powers

(2) The Corporation 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 connexion 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. (1) Any properties, assets, rights, debts, liabilities and obligations of the former owners and the former airline and the benefit and burden of all contracts made by or on behalf of the former owners and the former airline which are part of or concern

Vesting of property in Corporation

X

or relate to air transport services may with the consent of the Corporation, be transferred to and vest in the Corporation on such terms and conditions as may be agreed to by the Corporation and the former owners or the former airline.

(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 or concern, or relate to the air transport 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 Corporation.

Liabilities
to pay
tax etc.

21. Nothing in this Act shall exempt the Corporation from any tax, duty, rate, levy or other charge whatsoever, whether general or local, made under any law.

Accounts
and audit

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

(2) The accounts of the Corporation in respect of any financial year shall, within 4 months of the end of such financial year or with extended time 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 Corporation have been kept properly;
- (c) the Corporation has complied with all the financial provisions of this Act with which it is the duty of the Corporation to comply; and
- (d) the statement of accounts prepared by the Corporation was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Corporation.

(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 Corporation.

(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*

23. (1) The Corporation 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 its operations during such year together with the auditors' report and the audited accounts as provided for in section 22, and the Corporation shall publish them in such manner as the Minister may specify. Annual report

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

24 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 Corporation shall be deemed to be public purposes. Compulsory acquisition of land

25. If the operations of the Corporation require the resettlement of any person dwelling upon any communally owned land, the terms of such resettlement shall be subject to the agreement of the Government and of the local authorities of the area concerned. Resettlement measures

26. (1) In the exercise of its powers under this Act in relation to execution of works or interference with property the Corporation 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 of such compensation shall be determined by arbitration in accordance with the provision of the Arbitration Act. Compensation for loss or damage

(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. Cap. 06:01

27. The Minister may, for purposes associated with the administration of this Act, require the Corporation to provide him with estimates of the Corporation's future revenue and expenditure, and with such other information relating to its activities and operations, including books of accounts, records, documents and agreements relating to the air transport services operated by the Corporation. Power to call for information

Power to
make
bye-laws

28. 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.

Protection
from
personal
liability

29. No matter or thing done by any member of the Corporation or any officer or employee of the Corporation shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of this Act, render such person or any person acting by his direction personally liable to any action, claim or demand whatsoever.

Power to
make
regulations

30. The Minister may, after consultation with the Board, make regulations providing for any matter which under this Act is to be provided for by regulation or which otherwise relates to the administration of the Corporation.

Transitional
provisions

31. (1) Unless the contrary intention is indicated by the Board, every member of the staff of the former airline shall be deemed to have been duly appointed under this Act.

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

PASSED by the National Assembly this 31st day of March, 1988.

C.G. MOKOBI,
Clerk of the National Assembly.