

BOTSWANA POSTAL SERVICES ACT, 1989

No. 22



of 1989

ARRANGEMENT OF SECTIONS

SECTION

PART I Preliminary

1. Short title and commencement
2. Interpretation

PART II Establishment of Botswana Postal Services and Board of Management

3. Establishment of Botswana Postal Services
4. Establishment of Board
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 Agents of the Post

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

PART V Functions, Powers and Duties of the Post

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

PART VI Finances

17. Principles of financial operations
18. Fixing of tariffs
19. Borrowing powers
20. Vesting of property in the Post
21. Accounts and audit

PART VII *General*

22. Annual report
23. Compulsory acquisition of land
24. Resettlement measures
25. Compensation for loss or damage
26. Power to call for information
27. Power of Board to make bye-laws
28. Transitional provisions

PART VIII *Transmission of Postal Articles*

29. Registration of postal articles
30. When postal articles deemed to be in course of transmission or to be posted or delivered
31. Redirection and interception of postal articles
32. Articles deemed to be posted in contravention of Act
33. Articles to be sent by postmasters to Returned Letter Office for disposal
34. Articles other than letters may be opened for examination
35. Treatment of unclaimed letters in Returned Letter Office
36. Unclaimed articles of value and articles posted in contravention of Act
37. Sender of undelivered article liable for all charges due
38. Delay, return to sender or delivery to other than addressee of article prohibited
39. Undelivered articles of no value and newspapers may be destroyed
40. Articles addressed to insolvent person
41. Articles addressed to deceased person
42. Articles addressed to persons conducting lottery or dealing in indecent or obscene matter

PART IX *Remittance of Money Through Post Office*

43. Remittance of money through the Post
44. Director General may refuse to issue or pay money orders, etc., to certain persons
45. Money orders, etc., to be deemed bank notes

PART X *Offences and Penalties*

46. Forging stamps, dies, etc.
47. Removing marks from stamps, etc., with intent to defraud
48. Offences in connexion with carriage and delivery of mail
49. Fraudulent, injurious and offensive practices in connexion with postal articles and premises
50. Placing of dangerous or noxious articles and stoppage of mail
51. Tampering with mail
52. Wilfully obstructing or delaying mail
53. Wilfully opening or delaying postal articles
54. Unauthorized use of words "Post Office" "Botswana Mail" etc.
55. Unauthorized entry of premises, obstruction of business, and refusal to comply with regulations
56. Frauds in connexion with money orders etc.
57. Personating officers of the Post with fraudulent intent
58. False declaration
59. Attempting to commit or procuring commission of offences
60. In criminal proceedings, etc., property in postal articles, money, money orders, etc., may be laid in Director General

61. Evidence: acceptance of official marks

PART XI *Miscellaneous*

62. Limitation of liability

63. Detention of postal articles

64. Regulations

65. Repeal and Savings, Act 10 of 1980

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 Assent: 25th September, 1989.

Date of Commencement:

ENACTED by the Parliament of Botswana

PART I *Preliminary*

1. This Act may be cited as the Botswana Postal Services Act, 1989 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

2. 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 connexion 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 or 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 connexion 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

Short title
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Inter-
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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*

Establishment of Botswana Postal Services

3. (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.

Cap. 10:01

(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.

Establishment of Board

4. (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.

Resignation and removal from office

5. (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. (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: Tenure of office

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

PART III Meetings and Proceedings of Board

8. (1) The Board shall meet for the discharge of its functions at such times and places as the Chairman may appoint, so Meetings

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.

Signification
of documents

9. 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*

10. (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.

Appoint-
ment of
officers
and
employees

(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.

Delegation
to
committee

11. 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*

Functions
and
powers

12. (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 connexion 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 connexion with Postal services; and
- (l) carry on any activity which is reasonably requisite or convenient for or in connexion with the discharge of its functions under this Act.

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

(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. In the discharge of its functions the Post 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 Post which affect their interest. Co-operation with authorities

15. 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. Research and records

16. 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. Power of Minister to give directions

PART VI *Finances*

17. (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. Principles of financial operations

(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.

Fixing
of
tariffs

18. (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.

Borrowing
powers

19. (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 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.

Vesting
property
in the Post

20. (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 connexion 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 connexion 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.

Accounts
and audit

21. (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 preceding 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*

Annual
report

22. (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. 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.

Compulsory acquisition of land

24. 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.

Resettlement measures

25. (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.

Compensation for loss or damage

Cap. 06:01

(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. 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.

Power to call for information

27. 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.

Power of Board to make bye-laws

28. (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.

Transitional provision

(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*

29. (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:

Registration of postal articles

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.

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

30. 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 for 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.

Redirection and interception of postal articles

31. (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. 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. 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. (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. 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. (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.

Articles deemed to be posted in contravention of Act

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

Articles other than letters may be opened for examination

Treatment of unclaimed letters in Returned Letter Office

Unclaimed articles of value and articles posted in contravention of Act

(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.

Sender of undelivered article liable for all charges due

37. (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.

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

38. 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.

Undelivered articles of no value and newspapers may be destroyed

39. Notwithstanding anything to the contrary contained in sections 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. 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.

Articles addressed to insolvent person

41. 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.

Articles addressed to deceased person

42. 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.

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

PART IX *Remittance of Money Through Post Office*

43 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.

Remittance of money through the Post

44 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.

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

45. (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.

Money orders etc, to be deemed bank notes

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

PART X *Offences and Penalties*

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

Forging stamps, dies, etc.

- (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. (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 acknowledgment 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 practices 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,

Removing marks from stamps, etc. with intent to defraud

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. Any person authorized 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;

Offence in connexion with carriage and delivery of mail

- (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.

Fraudulent,
injurious
and offensive
practices
in connexion
with postal
articles and
premises

- 49. (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. (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. 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. 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. (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,

Placing of dangerous or noxious articles and stoppage of mail

Tampering with mail

Wilfully obstructing or delaying mail

Wilfully opening or delaying postal articles

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.

Unauthor-
ized use
of words
"Post Office"
"Botswana
Mail" etc.

54. 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.

Unauthor-
ized entry
of premises,
obstruction
of business,
and refusal
to comply
with
regulations

55. (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.

Frauds in
connexion
with money
orders etc

56. Any person who with fraudulent intent issues, re-issues, utters or presents to any person or at any post office any money order, postal order, savings bank warrant or other warrant, order or document for the remittance, payment, collection or deposit of money through or with the Post, or transmits through the Post or

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

57. 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.

Personating officers of the Post with fraudulent intent

58. 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.

False declaration

59. 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.

Attempting to commit or procuring commission of offences

60. 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 —

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

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

Evidence: acceptance of official marks

- (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*

Limitation
of liability

62. (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.

Detention
of postal
articles

63. (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. 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. Regulations

65. (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.

Repeal and
savings
Act 10
of 1980

PASSED by the National Assembly this 2nd day of August, 1989.

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