

CIVIL AVIATION AUTHORITY ACT, 2004

No. 33

of 2004



ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation

PART II — *Establishment, objectives, functions and powers of Authority*

3. Establishment of Authority
4. Seal of Authority
5. Jurisdiction of Authority
6. Objective of Authority
7. Functions and powers of Authority
8. Borrowing powers of Authority
9. Additional powers of Authority
10. Principles of operation
11. Consultation with users and departments
12. International agreements
13. Directions by Minister

PART III — *The Board*

14. Establishment of Board
15. Qualifications for appointment as Members
16. Disqualification from appointment as Member
17. Vacation of office and filling of vacancies
18. Functions and powers of Board
19. Meetings of Board
20. Committees of Board
21. Remuneration of members and members of committees

PART IV — *Staff of Authority*

22. Chief Executive Officer
23. Duties of Chief Executive Officer
24. Secretary
25. Other staff
26. Personnel Management

PART V — *Financial Provisions*

- 27. Funds of Authority
- 28. Entity in which Authority has interest not to contravene Act
- 29. Provision of information
- 30. Financial year
- 31. Accounts
- 32. Audit
- 33. Annual report
- 34. Business plan
- 35. Charges

PART VI — *Civil Aviation*

- 36. Air Navigation services
- 37. Safety standards
- 38. Aeronautical information services
- 39. Technical services
- 40. Meteorological services

PART VII — *Air transport and international obligations*

- 41. International obligations
- 42. Fares

PART VIII — *Appeals*

- 43. Appeals Tribunal

PART IX — *Airports*

- 44. Establishment of airports
- 45. Land use restriction
- 46. Customs, immigration and health services
- 47. Liability

PART X — *Security and policing*

- 48. Security bye-laws

PART XI — *Miscellaneous provisions*

- 49. Regulations
- 50. Power to take action
- 51. Exemption
- 52. Powers of Minister in times of war
- 53. Offences
- 54. Acts done on Botswana Aircraft outside Botswana

PART XII — *Transitional provisions*

- 55. Transfer of assets
- 56. Savings
- 57. Repeal of Cap. 71:01

An Act to establish a Civil Aviation Authority; to provide for its powers and functions; to provide for the establishment of a Board of the Authority; and for matters incidental or connected therewith.

Date of Assent: 20th December, 2004.

Date of Commencement: On notice.

ENACTED by the Parliament of Botswana.

PART I — Preliminary

1. This Act may be cited as the Civil Aviation Authority Act, 2004, and shall come into operation on such date as the Minister may, by Order published in the Gazette, appoint.

Short title and
commen-
cement

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

Interpretation

“accident” means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and the time all such persons have disembarked and in which—

- (a) a person is fatally or seriously injured as a result of being in or upon the aircraft or by direct contact with the aircraft or anything attached thereto or by direct exposure to jet blast, except where the injuries are from natural causes, self-inflicted or inflicted by some other person or are to stowaways hiding outside the area normally available to the passengers or crew;
- (b) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft and would normally require major repair or replacement of the affected component, other than—
 - (i) engine failure, or
 - (ii) damage limited to the engines or their accessories or to propeller or rotor blades, bent fairings or cowlings, wing tips, antennae, tyres, brakes or small dents or puncture holes in the aircraft skin; or
- (c) the aircraft is missing or completely inaccessible;

“aerial work” means work, other than public transport, for which an aircraft is flown for hire and reward;

- “aerodrome” means any area of land or water (including any buildings, installations and equipment) designed, equipped, set apart or commonly used, or affording facilities, for the landing and departure of aircraft;
- “AIC” means Aeronautical Information Circulars;
- “AIP” means Aeronautical Information Publications;
- “aircraft” includes all flying machines, aeroplanes, seaplanes, flying boats, helicopters, gliders, and all other machines that derive support from the reactions of the air, or other craft that is lighter than air;
- “air navigation service” includes —
- (a) communication services, ground to ground, or ground to air, provided for safety of aircraft;
 - (b) navigation services including radio, radar, satellite and visual aids to navigation;
 - (c) air traffic services provided for the safety and regularity of flight; and
 - (d) meteorological services provided for the safety and regularity of flight;
- “air route” means navigational airspace between two points and the terrain beneath such airspace identified, to the extent necessary, for the application of flight;
- “air route and airway facilities” means facilities provided to permit safe navigation of aircraft within the airspace of air routes and airways by —
- (a) visual and non-visual aids along the routes and airways;
 - (b) visual and non-visual aids to approach and landing, at airports;
 - (c) communication services;
 - (d) meteorological services;
 - (e) air traffic control services and facilities; and
 - (f) flight service services and facilities;
- “airway” means a designated air route of specified width and altitudes;
- “air transport service” means a service for the carriage by air of passengers, mail or other cargo;
- “Appeals Tribunal” means the Appeals Tribunal established under section 43;
- “assets” means any movable, immovable, corporeal or incorporeal property;
- “Authority” means the Civil Aviation Authority of Botswana established by section 3;
- “aviation security” means human and material resources intended to safeguard civil aviation against acts of unlawful interference;
- “Board” means the Board of the Authority established under section 14;
- “Botswana aircraft” means an aircraft registered in Botswana in accordance with regulations made under this Act;

“CAPs” means Civil Aviation Publications;

“cargo” means movable property, mail and animals;

“certificate” includes an Air Operator’s Certificate;

“Chairman” means the Chairman of the Board;

“charges” means fares, rates, fees, concession monies, rentals or subscriptions, received or receivable, charged or chargeable for any licence or certificate issued, service performed or facilities provided by the Authority;

“Chicago Convention” means the Convention on International Civil Aviation signed at Chicago on 7th December 1944, and includes any protocols amending the Convention, to which Botswana is a party, and any annexes to that Convention relating to international standards and recommended practices (SARPS) adopted in accordance with the Convention;

“Chief Executive Officer” means the Chief Executive Officer of the Authority, appointed under section 22;

“committee” means a committee established under section 20;

“crew” means all persons working on the aircraft, including the pilot or operator;

“flight” means —

- (a) in the case of a heavier than air aircraft, the operation of the aircraft from the moment at which the aircraft first moves under its own power for the purpose of taking-off until the moment at which it comes to rest after being airborne; and
- (b) in the case of a lighter than air aircraft, the operation of the aircraft from the moment when it becomes detached from the surface of the earth or a fixed object on the surface of the earth until the moment when it becomes again attached to the surface of the earth;

“foreign aircraft” means an aircraft other than a Botswana aircraft;

“ICAO” means International Civil Aviation Organisation;

“land” includes any estate or interest in land or an easement;

“licensed aerodrome” means an airport licensed in accordance with regulations made under this Act;

“Member” means a member of the Board;

“Minister” means the Minister for the time being responsible for civil aviation;

“NOTAM” means Notices to Airmen;

“officer” means a member of the staff of the Authority;

“operate”, in relation to an aerodrome, includes manage, maintain, secure and improve the aerodrome;

“operated by the Authority” means operated by the Authority in accordance with the provisions of this Act;

“operator”, in relation to an aircraft, means the person having management of the aircraft at a particular time;

“owner”, in relation to an aircraft or aerodrome, includes the person in whose name the aircraft or aerodrome is registered or licensed, any person who is or has been acting in Botswana for a foreign owner, or any person by whom the aircraft or aerodrome is hired at the time;

“passenger” means any person being conveyed by the aircraft, who is not a member of the crew;

“private airport” means an airport other than an airport belonging to the Authority, the Botswana Police or the Botswana Defence Force;

“public transport” means carriage of passengers or cargo for hire or reward given or promised to be given; and

“publication” means information given in any of the following publications issued on or after the coming into effect of this Act, that is, NOTAM, AIC, AIP, Notices to Licensed Aircraft Maintenance Engineers and to Owners of Civil Aircraft, CAPs or such other official publications so issued for the purpose of giving effect to any of the provisions of this Act.

PART II — Establishment, objectives, functions and powers of Authority

Establishment
of Authority

3. There is hereby established an Authority to be known as the Civil Aviation Authority of Botswana which shall be a body corporate with a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as a body corporate may by law perform.

Seal of
Authority

4. (1) The Seal of the Authority shall be such device as may be determined by the Authority and shall be kept by the Secretary.

(2) The Seal of the Authority shall be authenticated by the signatures of the Chief Executive Officer and the Secretary.

(3) In the absence of the Chief Executive Officer, the person performing the functions of the Chief Executive Officer may authenticate the Seal in his place and, in the absence of the Secretary, the person performing the functions of the Secretary may authenticate in his place.

(4) The Chief Executive Officer may, in writing, delegate to another officer his power to authenticate the Seal.

(5) The Secretary may, in writing, delegate to another officer his power to authenticate the Seal.

(6) A document issued by the Authority and sealed with the Seal of the Authority which Seal is authenticated in the manner provided by this section shall be received and taken to be a true instrument without further proof unless the contrary is shown.

5. The Authority shall have jurisdiction over —

- (a) all foreign aircraft in Botswana;
- (b) all Botswana aircraft within or outside Botswana;
- (c) all air navigation in Botswana;
- (d) all airports and aerodromes in Botswana;
- (e) all aspects of air transport services, public transport and aerial work in Botswana;
- (f) all aspects of aviation security in Botswana; and
- (g) all air routes, airways, airway facilities and air navigation service in Botswana.

Jurisdiction
of Authority

6. The objective of the Authority is to promote the safe, regular, secure and efficient use and development of civil aviation in Botswana.

Objective of
Authority

7. (1) The Authority shall be responsible for the implementation and enforcement of the regulations made by the Minister under section 49.

Functions
and powers
of Authority

(2) The Minister may delegate to the Authority any of the responsibilities conferred on him by this Act, except the power to make regulations.

(3) The Authority may, with the approval of the Minister, make bye-laws for any purpose connected with its powers, functions and duties under this Act and may impose penalties for breach of any such bye-laws not exceeding P 50,000 or imprisonment for a term not exceeding 10 years or both.

(4) In addition to its functions under subsection (1) the Authority shall advise the Government on policy matters concerning air transport and with regard to international conventions relating to civil aviation and the adoption of measures necessary to give effect to the standards and recommended practices under those conventions.

8. (1) The Authority may, with the prior written approval of the Minister, borrow funds required for meeting its obligations and for carrying out its functions.

Borrowing
powers
of Authority

(2) The Authority may borrow temporarily, by way of overdraft or otherwise, sums of money to be paid within a short period, for any urgent requirements of the Authority in the discharge of its functions.

(3) The Authority may raise funds for the discharge of its functions by the issuing of stock, and any interest payable on any stock issued under this subsection shall be a charge upon all property, undertaking and revenue of the Authority.

(4) For purposes of paying any loan under this section and any interest on that loan, the Authority may —

- (a) charge the assets, undertakings and revenue of the Authority;
- (b) issue debentures and other types of bonds; and
- (c) do any other thing necessary to enable the Authority to meet its obligations under that loan.

(5) The Minister for the time being responsible for finance shall, from time to time, prescribe the maximum sum that may be borrowed under this section.

Additional powers of Authority

9. (1) In addition to any other powers conferred on it by this Act, the Authority may —

- (a) delegate the performance of its duties and functions to other persons, in accordance with a written contract in this regard, except the powers delegated to it by the Minister;
- (b) establish subsidiaries and enter into such joint ventures, partnerships and other associations with public or private institutions as it may consider necessary to enable it to conduct its affairs, perform its functions and discharge its duties;
- (c) enter into contracts, subject to any financial limitation set by the Minister;
- (d) acquire, hold, lease out and dispose of all types of assets;
- (e) let or hire plant, machinery, equipment or assets acquired or required by the Authority, as the case may be; and
- (f) appoint a body or bodies to advise it in relation to the performance of its functions.

Principles of operation

10. The Authority shall perform its functions in accordance with sound commercial and financial principles and shall ensure, as far as possible, that its revenue is sufficient to meet the expenditure properly chargeable to its revenue.

Consultation with users and departments

11. (1) In the performance of its functions and exercise of its powers, the Authority shall, where appropriate, consult with Government, commercial, industrial, consumer and other relevant bodies and organisations.

(2) The Authority shall establish whatever consultative mechanisms it may consider necessary to secure the views of the users of the Authority's facilities and services.

International agreements

12. The Authority shall perform its functions in a manner consistent with the obligations of Botswana under the Chicago Convention and any other agreement between Botswana and any other country related to aviation safety or the regulation of air transport services.

Directions by Minister

13. (1) The Minister may give the Authority written general or specific directions as to the performance of its functions.

(2) Particulars of any directions referred to in subsection (1) shall be published in the Gazette, and included in the annual report of the Authority for the financial year in which they were given.

PART III — *The Board*

Establishment of Board

14. (1) There shall be a Board of the Authority which shall be the governing body of the Authority.

(2) The Board shall consist of a Chairman and not less than four and not more than eight Members, one of whom shall be the Chief Executive Officer.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Board.

(4) All Members, except the Chief Executive Officer, shall be appointed by the Minister for a maximum period of three years on such terms and conditions as may be specified in their instruments of appointment and shall be eligible for re-appointment.

(5) The Minister shall appoint one of the Members, other than the Chief Executive Officer, to be Chairman.

15. (1) A person may be appointed as a Member who is —

- (a) a citizen of Botswana;
- (b) lawfully resident in Botswana; or
- (c) a non-resident of Botswana.

Qualifications
for appointment
as Members

(2) When appointing Members, the Minister shall ensure that the Members possess demonstrated experience and capability in a relevant discipline including, but not limited to, air transportation, industry, commerce, finance, law, engineering or government.

16. Notwithstanding section 15, a person shall not qualify for appointment as a Member who —

- (a) is, at the time of appointment, a Member of Parliament, a councillor, a land board officer or a Chief;
- (b) has in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside;
- (c) within a period of ten years immediately preceding the date of his appointment, been convicted —
 - (i) of a criminal offence in any country, or
 - (ii) of any criminal offence for which he has not received a free pardon and notwithstanding that the sentence has been suspended, which, if committed in Botswana, would have resulted in a criminal offence having been committed, the penalty for which would be at least six months imprisonment without the option of a fine.

Disqualification
from
appointment as
Member

17. (1) A Member shall vacate his office —

- (a) if he becomes subject to a disqualification referred to in section 16;
- (b) upon giving not less than one month's written notice to the Minister;
- (c) if his appointment is terminated in terms of subsection (4);
- (d) if he ceases to be a citizen of Botswana; or
- (e) if he ceases to be lawfully resident in Botswana.

Vacation of
office and
filling of
vacancies

(2) As soon as possible after a vacancy occurs in the membership of the Board (including a vacancy in the office of the Chairman), the Chairman shall notify the Minister thereof, in writing.

(3) If a Member ceases to hold office for any reason, the Minister may, within three months of receiving the notice under subsection (2) appoint another person to take the place of that Member, and the person so appointed shall hold office for the remainder of the term of office of the Member in whose place he was appointed and shall be eligible for reappointment.

- (4) The Minister may terminate the appointment of a Member —
- (a) if the Member conducts himself in a manner that is detrimental to the efficient and proper performance of the functions of the Board;
 - (b) if the Member has been found to be physically or mentally incapable of performing his duties efficiently, and the Member's medical doctor has issued a certificate to that effect;
 - (c) if the Member becomes involved in a conflict of interest; or
 - (d) if the Member is absent from three consecutive meetings of the Board without the prior permission of the Chairman or if in any given year, attends less than half of the meetings of the Board.

Functions
and powers
of Board

18. The Board shall be responsible for the general control of the performance and management of the undertakings and affairs of the Authority, and without derogating from the generality of this provision, the Board shall —

- (a) determine the general performance of the Authority;
- (b) approve business plans of the Authority;
- (c) determine and approve estimates of income and expenditure of the Authority;
- (d) review the performance of the top management officers of the Authority;
- (e) monitor the deployment and utilization of the movable and immovable property of the Authority; and
- (f) do such other things as are provided by this Act or as may be necessary for the proper implementation of this Act.

Meetings of
Board

19. (1) The Board shall meet for the discharge of its functions as often as is necessary, but shall meet at least once in every three months at such time and place as the Chairman may determine.

(2) The Chairman shall preside at all meetings of the Board at which he is present, and, in his absence, the Members present shall elect one Member from among themselves to preside at a meeting of the Board.

(3) The Chairman shall, in writing, give each Member at least ten days notice of a meeting of the Board, but may, at the request of at least two Members, call an urgent meeting of the Board upon giving a shorter notice.

(4) The notice referred to in subsection (3) shall state —

- (a) the place and time of the meeting;
- (b) the agenda for the meeting; and
- (c) the text of any resolution to be submitted to the meeting.

(5) Subject to this Act, the Board shall regulate its own procedure.

(6) A simple majority of Members shall form a quorum at a meeting of the Board.

(7) A decision of a simple majority of the Members present and voting at a meeting of the Board shall be the decision of the Board, and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his deliberative vote.

(8) A decision of the Board shall not be rendered invalid by reason only of a vacancy on the Board or of the fact that a person who was not entitled to sit as a Member did so sit.

(9) The Chairman shall cause to be recorded and kept minutes of all proceedings of meetings of the Board.

(10) The Board may invite any number of persons to act as consultants or advisers at any of its meetings.

(11) A Member who has any personal interest in any specific transaction or matter before the Board shall disclose the nature of his interest to the Board and shall be disqualified from taking part in the deliberations of the Board with respect to that transaction or matter, if it is a contract and, in any other case, if the Board decides that the nature of the declared interest might prejudice its consideration of the transaction or matter.

(12) A Member who contravenes the provisions of subsection (11) shall be liable to removal from the Board.

(13) For the purposes of subsection (11), a notice given by a Member stating that he is a member of a body corporate or firm shall make him a person having an interest in a specific transaction or matter between the Authority and that body corporate or firm.

(14) If a Member cannot be present in a meeting where he may give notice of interest, a Member may, in writing, give notice of interest in any matter under subsection (11).

20. (1) The Board may, for the purpose of performing the functions of the Authority, establish such committees as it considers appropriate and may delegate to any such committee such of its functions as it considers necessary.

Committees
of Board

(2) The Board may appoint to the committees established under subsection (1) such number of persons, either from among the Members of the Board or not or from both, as it considers appropriate, to be members of such committees and such persons shall hold office for such period as the Board may determine:

Provided that the chairman of each committee so appointed shall be appointed by the Board from among Members.

(3) Subject to the specific or general directions of the Board, a committee may regulate its own procedure.

(4) Meetings of a committee shall be held at such time and place as the committee may determine, or as the Board may direct.

Remuneration of
Members and
members of
committees

(5) The chairman of each committee shall cause to be recorded and kept minutes of all proceedings of meetings of the committee.

21. A Member or a member of a committee or any other person not being an employee of the Authority, attending a meeting of the Board or of a committee, may be paid such remuneration or allowance as the Minister may determine.

PART IV — *Staff of Authority*

Chief Executive
Officer

22. (1) There shall be a Chief Executive Officer of the Authority, who shall be appointed by the Minister, on the recommendation of the Board, on such terms and conditions as may be specified in the instrument of appointment.

(2) The Chief Executive Officer shall be a person with considerable knowledge and experience in aviation, administration, industry or engineering and who has such other qualifications and experience or proven ability in other fields as the Board and the Minister may consider relevant.

(3) The Chief Executive Officer shall be responsible to the Board.

(4) The Chief Executive Officer shall not, while in the employment of the Authority, engage in paid employment outside the duties of his office in the Authority.

(5) The Chief Executive Officer shall hold office for a period not exceeding five years, as may be specified in the instrument of appointment, and shall be eligible for re-appointment.

(6) The Minister may, after consultation with the Board, terminate the appointment of the Chief Executive Officer —

(a) if the Chief Executive Officer conducts himself in a manner that is detrimental to the objective of, or the proper performance of the functions of, the Authority;

(b) if the Chief Executive Officer has been found to be physically or mentally incapable of performing his duties efficiently, and his medical doctor has issued a certificate to that effect;

(c) if the Chief Executive Officer becomes bankrupt; or

(d) if the Chief Executive Officer absents himself from office without reasonable excuse.

(7) The Chief Executive Officer may resign his office by giving six months' notice, in writing, to the Board and the Minister.

Duties of Chief
Executive
Officer

23. (1) The Chief Executive Officer shall, subject to the control of the Board on matters of policy, be responsible for —

(a) the supervision of the day-to-day affairs of the Authority and ensuring that the Authority is carrying out the functions and duties placed upon it in terms of this Act;

(b) running the Authority on sound commercial and financial principles in accordance with policies and decisions made by the Board;

- (c) the planning and implementation of the development of the civil aviation industry in Botswana, aiming at promoting efficient, safe and reliable aviation services;
- (d) controlling the resources and operations of all the services under the Authority;
- (e) submitting business plans and estimates of income and expenditure to the Board for its approval;
- (f) implementing the decisions of the Board; and
- (g) carrying out any duty that may be conferred on him by the Minister or the Board.

(2) In the performance of his duties, the Chief Executive Officer shall keep the Board fully informed of the affairs of the Authority and shall consult the Board from time to time, as may be necessary.

(3) The Chief Executive Officer may delegate to the Secretary or any other senior officer of the Authority, as he considers appropriate, the exercise of any powers which he is authorised to exercise under this Act.

24. (1) There shall be a Secretary to the Board who shall be appointed by the Chief Executive Officer, with the approval of the Board, on such terms and conditions as may be specified in the instrument of appointment.

Secretary

(2) The Secretary shall, in addition to any function that may be assigned to him by the Board or the Chief Executive Officer, be responsible for —

- (a) taking the minutes of the meetings of the Board;
- (b) keeping the records of all decisions of the Board; and
- (c) keeping records of legal transactions of the Authority.

(3) The Secretary shall, unless under exceptional circumstances the Board otherwise directs, in writing, giving the circumstances leading to its decision, attend all meetings of the Board, but shall not have a right to vote on any matter before the Board.

(4) In the absence of the Secretary, the Board may appoint another employee of the Authority to perform the functions of the Secretary until the Secretary resumes office or the vacancy is filled, as the case may be.

(5) In the performance of his duties, the Secretary shall be responsible to the Chief Executive Officer.

25. (1) In addition to the Chief Executive Officer and the Secretary, the Authority shall have such other officers and supporting staff as the Board may determine.

Other staff

(2) The Chief Executive Officer shall appoint the other officers and supporting staff referred to in subsection (1).

26. The Authority shall, in the case of its employees, pay wages, salaries, pensions, allowances and any other pecuniary and non-pecuniary benefits as the Board shall determine, subject to the approval of the Minister.

Personnel management

PART V — *Financial Provisions*

Funds of
Authority

- 27.** (1) The funds of the Authority shall consist of —
- (a) such capital as may be determined by the Government;
 - (b) such money as may be appropriated by Parliament for the purposes of the Authority;
 - (c) grants from Government;
 - (d) grants and loans from any body, organisation or person;
 - (e) interest on savings made by the Authority;
 - (f) such money as may accrue to the Authority in the discharge of its functions; and
 - (g) money from any other source as may be approved by the Minister.

(2) The Authority may open bank accounts in both domestic and foreign currencies in such bank or banks as the Board may approve.

(3) The Authority may, with the approval of the Board, invest any of its funds which it does not immediately require to use.

Entity in which
Authority has
interest not to
contravene Act
Provision of
information

28. A company or partnership in which the Authority may have an interest shall not do anything that is prohibited by, or do anything in any manner that contravenes, this Act.

29. The Authority shall provide to the Minister such information concerning the operations, plans and financial accounts of the Authority as the Minister may, from time to time, consider necessary.

Financial year

30. The financial year of the Authority shall be a period of twelve months commencing on the 1st April in each year and ending on the 31st March of the following year.

Accounts

31. (1) The Authority shall keep proper books of accounts of all its income and expenditure and proper records in relation to those accounts.

(2) The Authority shall cause to be prepared in respect of each financial year and not later than four months after the end of that financial year, a statement of accounts which shall include —

- (a) a balance sheet, an audited statement of income and expenditure and a statement of surplus and deficit; and
- (b) any other information in respect of the financial affairs of the Authority as the Minister for the time being responsible for finance may require.

Audit

32. (1) The accounts of the Authority shall, in respect of each financial year, be audited by the Auditor-General or a certified public accountant, appointed by him.

(2) The Authority shall ensure that within four months after the end of the financial year a statement of accounts referred to in section 31 (2) is submitted to the Auditor-General for auditing.

(3) The Auditor-General or any certified public accountant appointed by him shall, within two months after receipt of the statement of accounts submitted to him under subsection (2), audit the accounts and deliver to the Authority a copy of the audited accounts and his report on those accounts, stating any matter which in his opinion should be brought to the attention of the Minister.

(4) The Auditor-General or any certified public accountant appointed by him shall have access to all books of accounts, vouchers and other financial records of the Authority and be entitled to have any information and explanation required by him in relation to those records.

33. (1) Not later than six months after the end of each financial year, the Authority shall prepare an Annual Report on the performance of its functions during that year which Report shall include, among other things —

Annual
Report

- (a) an audited financial statement and a report of the Auditor-General on that statement; and
- (b) a record of all directions received from the Minister in the course of the year.

(2) The Annual Report referred to in subsection (1) shall be presented to the Minister, who shall, within 28 days of receipt thereof, lay it before the National Assembly after which it shall be published in the Gazette.

34. (1) The Authority shall produce a five-year business plan to be prepared by the Chief Executive Officer, and thereafter a subsequent business plan shall be prepared by him at least 12 months before the expiry of the current business plan.

Business
plan

(2) The business plan referred to in subsection (1) shall contain financial targets and performance targets for the Authority and shall be submitted to the Minister after approval by the Board.

(3) When preparing the business plan, the Chief Executive Officer shall consider —

- (a) the need for high standards of aviation safety;
- (b) the objectives and policies of the Government known to the Authority;
- (c) any directions given by the Minister;
- (d) any payments to be made by the Government to the Authority and their expressed purposes;
- (e) the need to maintain the extent of the Government's equity in the Authority;
- (f) the need to maintain a reasonable level of reserves having regard to estimated future infrastructure requirements;
- (g) the need to earn a reasonable rate of return on the Authority's assets other than assets wholly or principally used in the performance of regulatory functions or the provision of search and rescue services;
- (h) the expectation of the Government that the Authority will pay a reasonable dividend as other needs of the Authority permit;
- (i) any contributions to international bodies connected with civil aviation; and
- (j) any other commercial consideration that the Chief Executive Officer considers appropriate.

(4) The Board shall submit the business plan to the Minister at least four months prior to the commencement of the financial year in question, and the Minister shall submit any comments he may have on it not later than two months after its receipt.

(5) A summary of the business plan shall be published by the Authority in the Gazette after expiry of the period for comment, by the Minister.

(6) At least four months prior to the commencement of the financial year in question, the Authority shall provide to the Minister an estimate of any subsidy funding required to maintain operations during the coming financial year which estimate shall identify specific uses to which the funds will be put, why the service is required, and what actions are being taken to reduce the amount of any subsidy required.

35. (1) The Authority shall draw up a scheme prescribing charges to be paid to the Authority in respect of services or facilities provided by the Authority.

(2) Without limiting the generality of subsection (1), the services and facilities that the Authority may charge for, include —

- (a) the issuance, renewal or variation of airworthiness certificates;
- (b) inspection of aircraft;
- (c) the issuance, renewal or variation of personnel licences;
- (d) aircraft landing;
- (e) aircraft parking;
- (f) air navigation and communications;
- (g) fuel handling;
- (h) passenger services;
- (i) air operator's certificates;
- (j) the approval of aircraft maintenance organizations ;
- (k) noise and environmental pollution;
- (l) air transport licences;
- (m) traffic handling;
- (n) aircraft handling;
- (o) any other services related to the operation of aerodromes; and
- (p) use or rental of any assets of the Authority.

(3) The scheme referred to in subsection (1) shall come into force on publication thereof in the Gazette, which publication shall not be less than 60 days following the submission of the scheme for approval to the Minister.

(4) The scheme referred to in subsection (1) shall be published in an AIC giving the effective date of coming into force.

(5) The Authority may change and revise charges.

(6) Any change to a charge shall come into force on publication thereof in the Gazette.

(7) A charge shall be payable within a period specified by the Authority, and any failure to pay within the specified period may attract a penalty which shall be a percentage thereof as prescribed by the Authority and calculated in such manner as may be prescribed by the Authority from the due date for payment until the actual date of payment.

(8) If the total amount due is not paid within the period specified, the Authority may seize the aircraft or other property which is the subject of the amount not paid, after giving a reasonable notice of the intention to seize the aircraft or property to the owner or operator of the aircraft or property; and the Authority shall retain the aircraft or property until payment is made in full.

(9) If the total amount due remains unpaid for a period of 60 days from the date of the seizure of the aircraft or other property which is the subject of the amount not paid, the Authority may commence legal proceedings to sell the aircraft in accordance with such procedure as the Minister may, by statutory instrument, prescribe.

(10) The charge referred to in subsection (7) shall be reasonably related to expenses incurred, or to be incurred, by the Authority in relation to the provision of a service or facility.

PART VI — *Civil Aviation*

36. The Authority shall provide air navigation services in Botswana airspace, and for any area outside Botswana for which Botswana has, in accordance with international arrangements, undertaken to provide air navigation services and to direct and coordinate search and rescue services therein.

Air navigation
services

37. The Authority shall set and maintain safety standards related to personnel, aircraft and aerodromes, which meet international criteria.

Safety
standards

38. (1) The Authority shall provide a service to be known as the Aeronautical Information Services, which shall comprise the collection and dissemination of aeronautical information and instructions with respect to —

Aeronautical
information
services

- (a) aerodromes;
- (b) air traffic control services and facilities;
- (c) communication and air navigation services and facilities;
- (d) meteorological services and facilities;
- (e) search and rescue services and facilities;
- (f) procedures and regulatory requirements connected with air navigation;
- (g) hazards to air navigation;
- (h) differences from ICAO Standards, Recommended Practices and Procedures;
- (i) units of measurement;
- (j) nationality and registration marks;
- (k) special equipment to be carried on aircraft;
- (l) bird concentrations on or in the vicinity of aerodromes;
- (m) prohibited or restricted airspace and danger areas;
- (n) minimum flight altitudes;
- (o) fees and charges; and
- (p) aeronautical charts.

(2) In providing the Aeronautical Information Service, the Authority shall publish the AIP which shall include —

- (a) the aeronautical information and instructions that are by this Act required to be published;
- (b) such other aeronautical information and instructions as are of lasting character essential to air navigation; and
- (c) any matter relating to the facilitation of air traffic.

(3) The Authority shall, in addition to the AIP, publish NOTAM which shall include —

- (a) the aeronautical information and instructions that may, by this Act, be required to be published; and
- (b) such other aeronautical information and instructions as are of a temporary character, or cannot be promptly made available by publication in the Aeronautical Information Publication.

(4) The Authority shall forward copies of the AIP and NOTAM's (Class Two) to ICAO.

(5) The Authority may also publish information on various aviation topics such as licensing, maintenance or any other item such as Civil Aviation Publications, AIC and Airworthiness Circulars.

(6) Unless a document published by the Authority states explicitly that it is of an advisory or guidance nature, publications identified in this section shall have legal force.

Technical services

39. The Authority shall provide technical services for the design, installation, maintenance and modification of electronic, radio and other equipment used in the provision of air navigation and communication services.

Meteorological services

40. (1) The Authority shall provide specified aviation meteorological services in Botswana and shall, in a timely and orderly fashion, provide information concerning weather conditions and forecasts to all aircraft in Botswana airspace.

(2) The Department of Meteorological Services shall provide appropriate aviation meteorological services to the Authority.

(3) The basis on which meteorological services shall be provided to the Authority shall be determined by mutual agreement between the Department of Meteorological Services and the Authority, but this agreement shall generally follow the cost allocation principles and guidelines issued by ICAO on the subject.

PART VII — *Air transport and international obligations*

International obligations

41. (1) The Minister shall be the Aeronautical Authority for Botswana for the purpose of entering into agreements between states.

(2) The Authority shall comply with all international agreements relating to civil aviation, to which Botswana is a party.

(3) The Authority shall advise and assist the Government in its negotiations with other countries in regard to international air services originating, transiting or terminating at Botswana aerodromes and those overflying Botswana.

(4) The Authority shall act as adviser to the Government and assist in its dealings with ICAO, the Commonwealth Air Transport Council, and other similar international civil aviation bodies.

42. The Minister, on the recommendation of the Authority, may, unless specified in any other law to the contrary, determine fares, freight rates and related matters.

Fares

PART VIII — Appeals

43. (1) There shall be an Appeals Tribunal which shall hear and determine appeals from decisions of the Authority under this Act.

Appeals
Tribunal

(2) The Appeals Tribunal shall comprise three persons appointed by the Minister —

(a) one of whom shall have expertise and experience in administrative law;

(b) one of whom shall have expertise and experience in aviation and its regulations; and

(c) one of whom shall have expertise and experience in the issue which is the subject of the appeal.

(3) A person aggrieved by a decision of the Appeals Tribunal may appeal to the High Court.

PART IX — Airports

44. (1) The Authority shall establish and maintain airports and provide and maintain in connection therewith, their roads, approaches, apparatus, equipment, buildings and other accommodation.

Establishment
of airports

(2) The Authority, in formulating regulations with regard to the location, establishment, maintenance, use and operation of and security of airports, shall consult with —

(a) the local authorities in whose areas the airport or any part thereof is situated;

(b) other local authorities whose areas are in the neighbourhood of the airport; and

(c) other organisations representing the interests of persons concerned with the locality in which the airport is situated.

45. (1) The Minister, on the recommendation of the Authority, may by regulation impose prohibitions or restrictions on the use of any area of land or water as may be necessary to ensure safe and efficient civil aviation, and without limiting the generality of the foregoing, the Minister may give directions —

Land use
restriction

- (a) prohibiting or restricting the putting up of buildings or structures in such area;
- (b) requiring the total or partial demolition of any building or structure;
- (c) on the uses to which land in such area may not be put;
- (d) restricting the height of trees and other natural and man-made structures upon any land;
- (e) extinguishing any private right of way over land;
- (f) restricting the installation of cables, mains, pipes, wires or other apparatus upon, across, under, or over any land within the area;
- (g) restricting the use of certain electronics;
- (h) relating to the stopping or diversion of any highway;
- (i) as to the zoning of any area of land; and
- (j) prescribing offences and penalties not exceeding a fine of P 6,000 or imprisonment for a term not exceeding three years or both, in respect of the contravention of any of the provisions of such Order.

(2) Before the Minister imposes any prohibition or restriction in any area, he shall notify the public of his intention to do so.

(3) The Minister shall cause notice of every zoning regulation referred to in subsection (1)(i) that is proposed to be made to be published once a week, for two consecutive weeks, in at least one local newspaper, if any, circulating in the area in which the proposed zoning regulation relates and once a week, for two consecutive weeks, in two consecutive issues of the Gazette.

(4) Reasonable opportunity shall be afforded to interested persons to make representations to the Minister with respect to zoning regulations, before the restrictions are actually made.

Customs,
immigration
and health
services

46. (1) The Authority shall ensure that suitable facilities are made available to the relevant Government authorities and agencies at airports for the provision of customs, immigration and health services.

(2) The provision of the customs, immigration and health services referred to in subsection (1) shall not be the responsibility of the Authority, but of the appropriate Government authority or agency.

(3) The terms and conditions under which the facilities referred to in subsection (1) shall be made available and provided shall be determined by agreement between the Authority and the Government authority or agency concerned.

Liability

47. Airports established by the Authority shall be made available for use by civil aircraft on condition that the use is entirely at the risk of the registered owner of the aircraft concerned and that neither the Authority, the licensee nor the Government, shall be held responsible for loss or damage resulting from the use of any Authority or licensed airport or its accessory facilities.

PART X — *Security and policing*

48. For the purpose of protecting passengers, crew members, aircraft, airports and other aviation facilities, preventing unlawful interference with civil aviation and ensuring that appropriate action is taken when interference occurs or is likely to occur, the Authority may make bye-laws —

Security
bye-laws

- (a) requiring any owner or operator of a Botswana registered aircraft to establish, maintain and carry out, at an airport and on the aircraft and at any aviation facilities under his control, security measures that may be prescribed by the regulations or security measures necessary for the purpose for which the regulations are made;
- (b) requiring any owner or operator of an aircraft registered outside Botswana that lands at or departs from any airport in Botswana to establish, maintain and carry out, at aerodromes and on the aircraft and at any aviation facilities under his control, security measures that may be prescribed by the regulations or security measures necessary for the purpose for which the regulations are made;
- (c) requiring any operator of a licensed airport to maintain and carry out security measures at the aerodrome;
- (d) relating to the screening of all passengers and cargo for security purposes;
- (e) relating to the submission, by persons boarding an aircraft, to searches by an authorised security officer;
- (f) relating to the submission by any person boarding an aircraft of the goods taken or placed by him on board the aircraft to search by an authorised security officer;
- (g) relating to the security of airports;
- (h) relating to the security of equipment and installations, including those that are located away from airports they are connected to;
- (i) the policing of property of the Authority by a security force trained in airports security; and
- (j) the inspection of all aircraft on Botswana territory, regardless of the place of registration or place of origin.

PART XI — *Miscellaneous provisions*

49. (1) The Minister, on the recommendation of the Authority, may make regulations for the better carrying out of the provisions of this Act and may impose penalties for breach by any person of any such regulations.

Regulations

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations —

(a) relating to —

- (i) the licensing of air transport,
- (ii) the designation of domestic and international air carriers,
- (iii) the provision of air navigation services,
- (iv) the establishment, maintenance, development, operation and ownership of airports,
- (v) the provision of rescue and fire fighting services at airports,
- (vi) the provision of assistance and information, including aeronautical information services,
- (vii) the co-ordination and direction of search and rescue services,
- (viii) the provision of facilities and services in support of inspectors of accidents in relation to the investigation of accidents,
- (ix) the registration of aircraft,
- (x) the safety regulation of aircraft,
- (xi) the provision, in conjunction with other agencies of the Government, including the military, of arrangements to prevent or deal with all unlawful interference with aviation security (including passenger screening) in Botswana,
- (xii) the control of air traffic,
- (xiii) the certification of operators of aircraft,
- (xiv) the licensing of civil aviation personnel,
- (xv) the licensing of private airports,
- (xvi) the provision of meteorological information to aircraft,
- (xvii) the publication and dissemination of all regulations pertaining to civil aviation,
- (xviii) the licensing of crews engaged in the operation of aircraft,
- (xix) the design, construction, maintenance, operation and use of aircraft and related equipment,
- (xx) the personnel engaged in the maintenance of aircraft and related equipment,
- (xxi) the planning, construction and use of airports,
- (xxii) the personnel engaged in anything referred to in sub paragraph (iv),
- (xxiii) the planning, establishment, maintenance, operation and use of air route and airway facilities, rescue and firefighting services, and search and rescue services, and any construction associated with those facilities and services,
- (xxiv) the person engaged in anything referred to in sub paragraph (xxiii),
- (xxv) giving effect to, and carrying out, the provisions of the Chicago Convention,
- (xxvi) public transport, aerial work and the prohibition of the carriage by air of goods of such classes as may be prescribed,

- (xxvii) the minimizing or preventing of interference with the use of, or the effectiveness of apparatus used in connection, with, air navigation or communications, and the prohibiting of, or the regulating of, the use of such apparatus and the display of such signs and lights as may endanger aircraft,
- (xxviii) the regulation of the making of signals and other communications by or to aircraft and persons carried in aircraft,
- (xxix) the prohibition, restriction or regulation of the carrying on of any trade or business within any airport which is under the control of the Authority or licensed by the Authority,
- (xxx) the establishment and regulation of the conditions of use, including the charges to be made for the use of any airport operated by the Authority,
- (xxxi) the prescribing of charges payable for the implementation or carrying out of any of the functions, duties, responsibilities and services to be provided by the Authority,
- (xxxii) any other functions that may be conferred on the Authority by the Minister or any other law,
- (xxxiii) the licensing of flight crew members, air traffic controllers and operators of equipment used to provide services relating to civil aviation,
- (xxxiv) the licensing of persons engaged in the design, manufacture, distribution, maintenance, approval, certification or installation of aeronautical products,
- (xxxv) the installation, maintenance, approval and certification of equipment used to provide services relating to civil aviation,
- (xxxvi) activities at aerodromes and the location of aerodromes,
- (xxxvii) noise emanating from aerodromes and aircraft,
- (xxxviii) the conditions under which persons or personal belongings, baggage, goods or cargo of any kind may be transported by aircraft,
- (xxxix) the keeping and preservation of records and documents relating to aerodromes, persons holding Botswana Civil Aviation documents, and equipment and facilities used to provide services relating to civil aviation,
- (xxxx) the handling, marking, storage and delivery of fuel and any lubricants or chemicals used during or in connection with the operation of aircraft,
- (xxxxi) the airworthiness of aircraft,
- (xxxxii) transport of dangerous goods, ammunition and munitions of war,
- (xxxxiii) any other area that the Authority may consider necessary to ensure the safety of civil aviation, and
- (xxxxiv) the procedure of appeals and the proceedings of the Appeals Tribunal;

- (b) prescribing the procedure to be followed when commencing proceedings to sell an aircraft or other property which is the subject of any amount not paid under this Act in respect of services or facilities provided by the Authority;
- (c) to ensure the safe, regular, orderly and expeditious flow of air traffic, in respect of —
 - (i) air traffic control procedures and services,
 - (ii) the provision of navigation aids,
 - (iii) standards for navigation aids,
 - (iv) requirements for equipment to be carried on aircraft,
 - (v) the conditions under which aircraft may be used or operated or under which any act may be performed in or from aircraft,
 - (vi) the aerodromes at which aircraft coming from outside Botswana are to land and the conditions to which such aircraft are subject,
 - (vii) the classification and use of airspace and the control and use of air routes, and
 - (viii) rules of the air;
- (d) for the control of the operation of aircraft within or directly above the aerodrome for the purposes of limiting or mitigating the effect of noise, vibration or atmospheric pollution caused by aircraft using the aerodrome; and
- (e) necessary for regulating the location, establishment, maintenance, use, operation and security of airports and the conduct of all persons while within airports and in connection with the roads, approaches, apparatus, equipment, buildings and other accommodation on airports, and, in particular —
 - (i) relating to securing the safety of aircraft, vehicles and persons using the airport and preventing danger to the public arising from the use and operation of an airport,
 - (ii) relating to the prevention of obstruction within an airport,
 - (iii) regulating vehicular traffic anywhere within the airport, including speed restrictions and parking limitations,
 - (iv) prohibiting or restricting access of persons, vehicles or animals to any part of an airport,
 - (v) relating to the preservation of good order and conduct within an airport and prevention of damage to property,
 - (vi) requiring any person, if so requested by a police officer or airport official, to leave the airport, or to state his name and address and the purpose of his presence on the airport,
 - (vii) relating to the disposal of unclaimed property in or upon the establishment of airports, and
 - (viii) for controlling the disposal of waste, international garbage and spilled fuel.

(3) For the purposes of subsection (2)(e)(viii), “international garbage” means garbage generated in the aircraft by passengers and crew on international flights;

50. The Authority may take such legal measures as are necessary to ensure implementation of and compliance with the Regulations made under this Act.

Power to take action

51. (1) The Minister may, on such terms and conditions as he may consider necessary, exempt any person, aircraft, airport, airport facility or service, from application of any regulations made under this Act, if the exemption is in the public interest and is not likely to affect aviation safety.

Exemption

(2) Any exemption granted under this section shall be published in the Gazette.

52. In time of war, whether actual or imminent, or of great national emergency, and if the President declares the existence of such a state of affairs, the Minister may —

Powers of Minister in times of war

- (a) by Order published in the Gazette, regulate or prohibit, either absolutely or subject to such conditions as may be contained in the Order, navigation of all aircraft over Botswana;
- (b) by Order published in the Gazette, provide for taking of, and using for the purpose of the Government's military forces, any aerodromes, or any aircraft, machinery, plant, material or things found on the aerodrome, and for regulating or prohibiting the use, erection, building, maintenance or establishment of any aerodrome, or flying school; and
- (c) by Order published in the Gazette, require the following to be placed at the disposal of the Minister —
 - (i) all or any of the property or rights of, or under the control of, the Authority,
 - (ii) the whole or any part of the relevant undertaking of any Botswana air transport business, and
 - (iii) all or any property or rights of, or under the control of, any businesses which appertain to the undertaking under sub paragraph (ii).

53. A person who contravenes any directive given by the Minister in terms of this Act, or any regulation or bye-law made in terms of this Act, or any notice or information issued by the Authority in terms of this Act, shall be guilty of an offence and liable to a fine not exceeding P50,000 or to imprisonment for a term not exceeding ten years, or to both.

Offences

54. (1) Any act done by any person on a Botswana aircraft outside Botswana which, if it had been done by him in Botswana, would have constituted an offence shall, for the purposes of any criminal proceedings in Botswana against that person in respect of that act, be deemed to have been done by him in Botswana.

Acts done on Botswana aircraft outside Botswana

(2) Except with the consent of the Attorney-General, no proceedings shall be instituted by virtue of subsection (1) against a person who is not a citizen of Botswana at the time of the act in question.

PART XII — *Transitional provisions*

Transfer
of assets

55. Upon the commencement of this Act, all existing assets used in the provision of civil aviation services and owned by the Government, shall be transferred to, and vest in, the Authority.

Savings
Cap. 71:01

56. The regulations relating to the control and governance of civil aviation made under the Civil Aviation Act and in existence prior to the commencement of this Act shall be deemed to be regulations made under the provisions of this Act, and shall remain in force until such time as the Minister, on the recommendation of the Authority, may revoke or amend them.

Repeal of
Cap. 71:01

57. The Civil Aviation Act is hereby repealed.

PASSED by the National Assembly this 8th day of December, 2004.

A. MATLHAKU,
Clerk of the National Assembly.