

# CIVIL AVIATION ACT, 2011

Act No. 11



of 2011

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**An Act to provide for a Civil Aviation Authority, its functions and further for the control and regulation of civil aviation and to provide for matters related thereto.**

*Date of Assent:* 31.08.2011

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

**1.** This Act may be cited as the Civil Aviation Act, 2011, and shall come into operation on such date as the Minister may, by Order published in the Gazette, appoint.

Interpretation

**2.** In this Act, unless the context otherwise requires —  
 “accident” means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time the person has disembarked, in which —

- (a) a person is fatally or seriously injured as a result of —
  - (i) being in or upon the aircraft,
  - (ii) direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or
  - (iii) direct exposure to jet blast, except where the injuries are from natural causes, self-inflicted or inflicted by some other person, or when the injuries are due to stowaways hiding outside the areas normally available to the passengers or crew; or
- (b) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft which would normally require major repair or replacement of the affected component, except for —
  - (i) engine failure, or
  - (ii) damage which is limited to the engines, cowlings, accessories, propellers, wing tips, antennas, tires, brakes, fairings, small dents or puncture holes in the aircraft skin, or
- (c) the aircraft is missing or completely inaccessible;

- “Accident Investigator” means an Accident Investigator appointed under section 71;
- “aerial work” means an aircraft operation in which an aircraft is used to carry out specialised services including agriculture, construction, photography, surveying, observation and patrol, search and rescue and aerial advertisement;
- “aerodrome” means a defined area on land or water (including any buildings, installations and equipment) designed, equipped, set apart or commonly used, or affording facilities, for the arrival, departure and surface movement of aircraft;
- “AIC” means Aeronautical Information Circulars;
- “AIP” means Aeronautical Information Publications;
- “aircraft” means any machine that can derive support in the atmosphere from the reactions of the air other than reactions of the air against the earth’s surface;
- “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 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;
- “air service” means any service provided for hire and reward involving the use of an aircraft and includes an air transport service, aerial work and flight instruction;
- “airway” means a designated air route of specified width and altitudes;
- “air transport service” means any service performed by means of an aircraft for hire or reward;
- “Appeals Tribunal” means the Appeals Tribunal established under section 79;

- “assets” means any movable, immovable, corporeal or incorporeal property;
- “Authority” means the Civil Aviation Authority of Botswana continued under section 4;
- “aviation security” means human and material resources intended to safeguard civil aviation against acts of unlawful interference;
- “BARs” means the Botswana Aviation Requirements;
- “Board” means the Board of the Authority continued under section 15 of the Act;
- “Botswana aircraft” means an aircraft registered in Botswana in accordance with this Act;
- “CAPs” means Civil Aviation Publications;
- “cargo” means movable property, mail and animals;
- “Chairperson” means the Chairperson 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 27;
- “committee” means a committee established under section 25;
- “crew” means persons performing the duties of flight crew or cabin crew on an aircraft;
- “Director” means the Director of Accident Investigation appointed under section 69;
- “Directorate” means the Directorate of Accident Investigation established under section 69;
- “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 air operator” means an operator who holds an air operator certificate from a State other than Botswana;

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

“ICAO” means International Civil Aviation Organisation;

“incident” means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;

“kite” means a tethered aircraft;

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

“Member” means a member of the Board;

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

“NOTAM” means Notices to Airmen;

“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 any person, organisation or enterprise engaged or offering to engage in an aircraft operation;

“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 in Botswana for a foreign owner, or any person by whom the aircraft or aerodrome is hired at the time;

“private aerodrome” means an aerodrome other than an aerodrome 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;

“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, BARs, 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;

“regulated agent” means an agent, freight forwarder or other entity who conducts business with an operator in respect of cargo, courier and express parcels or mail;

“repealed Act” means the Civil Aviation Authority Act repealed under section 93;

“Secretary” means the Secretary of the Authority, appointed under section 29;

“senior employee” means any employee of the Authority who holds a position which is designated as such; and

“serious incident” means an incident involving circumstances indicating that an accident nearly occurred.

Cap. 71:04

- 3.** (1) Subject to subsection (2), this Act shall not apply to state aircraft.
- (2) Notwithstanding subsection (1), state aircraft shall, in the interest of safety be subject to the provisions of this Act and any regulations made under this Act.
- (3) State aircraft includes —
- (a) aircraft used or commanded by the Botswana Defence Force, the Botswana Police Service, Department of Wildlife and National Parks, Directorate on Intelligence and Security or customs service;
- (b) aircraft used in the military, security, customs or police service of a foreign state.

Application  
of Act

Continuation  
of Civil  
Aviation  
Authority

4. (1) There shall continue to be a body corporate known as the Civil Aviation Authority of Botswana 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.

(2) All rights, obligations, assets and liabilities which have accrued to the Civil Aviation Authority in terms of the repealed Act shall, upon this Act coming into force, simultaneously pass and accrue to the Authority and be dealt with in terms of this Act.

(3) The assets referred to under subsection (2) shall include assets used in the provision of civil aviation services that were owned by the Government and vested in the Authority under the repealed Act.

Seal of  
Authority

5. (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 or her place and, in the absence of the Secretary, the person performing the functions of the Secretary may authenticate in his or her place.

(4) The Chief Executive Officer may, in writing, delegate to another employee his or her power to authenticate the seal.

(5) The Secretary may, in writing, delegate to another officer his or her 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.

Jurisdiction of  
Authority

6. 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 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) air routes, airways, air carriers, airway facilities and air navigation services in Botswana.

Objective of  
Authority

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

Functions  
and powers  
of Authority

8. (1) The Authority shall be responsible for the implementation and enforcement of this Act and the regulations made by the Minister under section 89.

(2) 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 P5 000 000, or imprisonment for a term not exceeding 10 years, or to both.

(3) In addition to its functions under subsection (1) the Authority shall be responsible for —

- (a) advising the Government on policy matters concerning civil aviation;
- (b) advising the Government 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;
- (c) the licensing of air transport;
- (d) the establishment, maintenance, development, operation and ownership of aerodromes;
- (e) the provision of air navigation services;
- (f) the provision of assistance and information including aeronautical information services;
- (g) the co-ordination and direction of search and rescue services;
- (h) the registration of aircraft;
- (i) the safety regulation of civil aviation;
- (j) the control of air traffic;
- (k) the certification of operators of aircraft;
- (l) the licensing of civil aviation personnel;
- (m) the provision of meteorological information to aircraft;
- (n) the publication and dissemination of bye-laws, BARs, NOTAM or any other information pertaining to civil aviation;
- (o) establishment, development and management of training facilities for the purpose of training employees in subjects necessary for the proper performance of the Authority; and
- (p) any other functions that may be conferred on it by the Minister or any other enactment.

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

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

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

Borrowing  
powers of  
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

**10.** (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 under section 14;
- (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

**11.** 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

**12.** (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 and obligations

**13.** (1) 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.

(2) The Minister shall be the Aeronautical Authority for Botswana for purposes of air services agreements between States.

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

(4) 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.

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

**14.** (1) The Minister may give the Authority written general directions regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the contractual or other legal obligations of the Authority, and the Authority shall give effect to any such directions.

Directions and  
delegation by  
Minister

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

(3) The Minister may delegate to the Authority any of the responsibilities conferred on him or her under this Act, except the power to make regulations.

### PART III — *The Board*

**15.** (1) There shall continue to be a Board of the Authority which shall be the governing body of the Authority.

Continuation  
of Board

(2) The Board shall consist of —

(a) a Chairperson;

(b) not less than four but not more than eight other 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.

**16.** (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 Member

(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.

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

(a) is, at the time of appointment, a Member of the National Assembly, a Councillor, a Chief or a land board member or officer;

(b) has in terms of any law in force in any country —

Disqualification  
from  
appointment  
as Member

- (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
- (ii) made an assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;
- (c) within a period of ten years immediately preceding the date of his or her appointment, been convicted —
  - (i) of a criminal offence within Botswana, or
  - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

Vacation of office and filling of vacancies

**18.** (1) A Member shall vacate his or her office —

- (a) if he or she becomes subject to a disqualification referred to under section 17;
- (b) upon giving not less than one month's written notice to the Minister; or
- (c) if his or her appointment is terminated in terms of subsection (4).

(2) As soon as possible after a vacancy occurs in the membership of the Board (including a vacancy in the office of the Chairperson), the Chairperson shall notify the Minister 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 or she was appointed and shall be eligible for re-appointment.

(4) The Minister may terminate the appointment of a Member —

- (a) if the Member conducts himself or herself 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 or her duties efficiently, and the Member's medical doctor has issued a certificate to that effect;
- (c) if the Member is absent from three consecutive meetings of the Board without the prior permission of the Chairperson or if in any given year, attends less than half of the meetings of the Board; or
- (d) if the Member contravenes any of the provisions of this Act.

Functions and powers of Board

**19.** 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 senior staff of the Authority;
- (e) monitor the deployment and utilisation of the movable and immovable property of the Authority; and
- (f) do such other things as are provided by this Act or as may be necessary for the proper implementation of this Act.

**20.** (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 Chairperson may determine.

Meetings of Board

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

(3) There shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(4) The Chairperson 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.

(5) The notice referred to under subsection (4) 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.

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

**21.** (1) A simple majority of Members shall form a quorum at any meeting of the Board.

Quorum of Board

(2) 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 or her deliberative vote.

(3) 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.

**22.** The Board may invite any person whose presence it considers necessary to attend and participate in its meetings, but such person shall have no right to vote.

Co-option of other personnel

**23.** (1) If a Member is present at a meeting of the Board at which any matter in which the Member is directly or indirectly interested in a private capacity is the subject of consideration, he or she shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

Disclosure of interest by members

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a Member fails to disclose his or her interest in accordance with subsection (1), and a decision by the Board is made benefiting that Member, such decision shall be null and void to the extent that it benefits such Member.

(4) For the purposes of subsection (1), a disclosure given by a Member stating that he or she is a member of a body corporate or firm shall make him or her a person having an interest in a specific transaction or matter between the Authority and that body corporate or firm.

(5) Any Member or any other person who contravenes the provisions of this section shall be liable to removal from the Board.

Confidentiality

**24.** (1) A Member and any other person assisting the Board shall observe and preserve the confidentiality of all matters coming before the Board, and such confidentiality shall subsist even after the termination of their terms of office or their mandates.

(2) Any Member or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any Member who contravenes subsection (2) shall be liable to removal from the Board.

(4) Any person to whom confidential information is revealed through working with the Board who contravenes subsection (2) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding 12 months, or to both.

Committees  
of Board

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

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

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

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

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

(5) At any meeting of a committee the majority of members of the committee or such other number as may be fixed by the Board in any particular case shall form a quorum.

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

(7) Sections 16, 17, 18, 23 and 24 shall apply with necessary modification to members of a Committee.

Remuneration  
of Members  
and members  
of committees

**26.** 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.

27. (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.

Chief  
Executive  
Officer

(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 or her 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 or herself 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 or her duties efficiently by his or her medical doctor or by an independent medical doctor;

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

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

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

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

Duties of  
Chief  
Executive  
Officer

(a) the supervision of the day-to-day affairs of the Authority;

(b) ensuring that the Authority is carrying out the functions and duties placed upon it in terms of this Act including the enforcement of safety standards and implementation of safety oversight activities;

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

(d) the planning and implementation of the development of the civil aviation industry in Botswana, aiming at promoting efficient, safe and reliable aviation services;

(e) controlling the resources and operations of all the services under the Authority;

(f) submitting business plans and estimates of income and expenditure to the Board for its approval;

(g) implementing the decisions of the Board; and

(h) carrying out any duty that may be conferred on him or her by the Minister or the Board.

(2) In the performance of his or her 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, any senior staff or any member of staff of the Authority, as he or she considers appropriate, the exercise of any powers which he or she is authorised to exercise under this Act.

Secretary

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

(2) The Secretary shall, in addition to any function that may be assigned to him or her 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 Chief Executive Officer may appoint any member of staff 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 or her duties, the Secretary shall be responsible to the Chief Executive Officer.

(6) The Chief Executive Officer may, with the approval of the Board, terminate the appointment of the Secretary, on such grounds referred to in the instrument of appointment or on the same grounds specified in relation to the Chief Executive Officer under paragraphs (a) to (d) of section 27 (6).

Appointment  
of staff of  
Authority

**30.** (1) The Chief Executive Officer shall appoint the senior staff of the Authority with the approval of the Board.

(2) The Chief Executive Officer shall appoint such other staff as may be necessary for the proper discharge of the functions of the Authority.

(3) The terms and conditions of employment of the senior staff of the Authority as well as other staff shall be determined by the Board.

(4) The Authority shall, in the case of its staff other than the Chief Executive Officer, pay wages, salaries, pensions, allowances and any other pecuniary and non-pecuniary benefits as the Board shall determine.

Training of  
staff by  
Authority

**31.** The Authority shall put in place arrangements to train its staff to acceptable standards and for competency for the performance of their duties.

Exemption  
from personal  
liability

**32.** A Member, member of a committee of the Board, or any member of staff of the Authority or other person acting under the direction of the Authority or the Board shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act done in good faith in the performance of his or her duties under this Act.

- 33.** (1) The funds of the Authority shall consist of — Funds of Authority
- (a) such capital as may be determined by the Government;
  - (b) such money as may be appropriated by the National Assembly for the purposes of the Authority;
  - (c) grants from Government;
  - (d) grants or 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.
- 34.** 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. Provision of information
- 35.** The financial year of the Authority shall be a period of twelve months commencing on 1st April in each year and ending on 31st March of the following year. Financial year
- 36.** (1) The Authority shall keep proper books of accounts of all its income and expenditure and proper records in relation to those accounts. 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, a 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.
- 37.** (1) The accounts of the Authority in respect of each financial year shall, within four months of the end of the financial year, be audited by an auditor appointed by the Board. Audit
- (2) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems it pertinent to comment on, whether or not —
- (a) the auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
  - (b) the accounts and related records of the Authority have been properly kept;
  - (c) the Authority has complied with all the financial provisions of this Act with which it is its duty to comply with; and

(d) the statement of accounts prepared by the Authority 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 Authority.

(3) The auditor's report and a copy of the audited accounts shall, within 14 days of completion, be forwarded to the Authority by the auditor.

Annual  
Report

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

(a) the auditor's report and a copy of the audited accounts; and

(b) a record of all directions received from the Minister in the course of the year.

(2) The Annual Report referred to under 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.

Business plan

**39.** (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 or her at least 12 months before the expiry of the current business plan.

(2) The business plan referred to under 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;

(c) any directions given by the Board or 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 to it as other needs of the Authority may 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 Chief Executive Officer shall submit the business plan to the Minister at least six months prior to the commencement of the financial year in question, and the Minister shall submit any comments he or she 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) The Authority shall, at least six months prior to the commencement of the financial year, provide to the Minister an estimate of any subsidy funding required to maintain operations during the coming financial year which estimate shall identify —

(a) specific uses to which the funds will be put;

(b) why the service is required; and

(c) what actions are being taken to reduce the amount of any subsidy required.

#### PART VI — *Civil Aviation*

**40.** 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 direct and coordinate search and rescue services.

Air navigation  
services

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

Aeronautical  
information  
services

(a) aerodromes and airports;

(b) air traffic control services and facilities;

(c) 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 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

**42.** 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

**43.** (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.

Act No. 5 of 2009

(2) The National Meteorological Service 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 National Meteorological Service and the Authority, but this agreement shall generally follow the cost allocation principles and guidelines issued by ICAO on the subject.

## *PART VII – Registration of Aircraft, Certificate of Airworthiness*

Registration of aircraft

**44.** (1) Subject to subsections (2) and (3), no aircraft shall fly or operate within Botswana unless —

- (a) it is registered —
  - (i) in Botswana,
  - (ii) in a contracting State of ICAO, or
  - (iii) in any State in which Botswana has entered into an agreement with in regard to the registration of aircraft; or
- (b) it bears, in the prescribed manner, the necessary nationality and registration marks.

(2) Notwithstanding subsection (1), where special circumstances exist, the Authority may, subject to such conditions as the Authority may think fit to impose, exempt a foreign registered aircraft from the provisions of subsection (1).

(3) Notwithstanding subsection (1), an aircraft may fly within Botswana, unregistered, if and as long as it is flown for the purpose of, or in connection with any experiment or test, or any other purpose which appears to the satisfaction of the Authority to be valid to permit the aircraft to fly unregistered.

(4) Notwithstanding subsection (1), the Minister may on the recommendations of the Authority, exempt kites and powered parachutes from registration.

(5) An aircraft exempted under subsections (2) or (3) shall carry, in addition to other documents which it may be required to carry under this Act, an exemption registration certificate or any other document, certifying that the aircraft is so exempted and stating any conditions subject to which the exemption was granted.

(6) Any person who contravenes subsection (1) or who flies or operates an aircraft bearing nationality and registration marks purporting to have been registered in a State other than where it has been registered, commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

(7) The Minister may, on the recommendations of the Authority, make regulations providing for the registration of aircraft and the form of nationality and registration marks.

**45.** The Authority shall establish and maintain a system for the national registration of aircraft in Botswana.

Registration  
system

**46. (1)** An aircraft shall not fly or operate in Botswana unless a certificate of airworthiness for that aircraft is —

Certificate of  
airworthiness

(a) issued by the Authority under this Act if it is an aircraft registered in Botswana;

(b) issued by a State in which the aircraft is registered; or

(c) issued by the State of the operator.

(2) Notwithstanding subsection (1), an aircraft may fly within Botswana without a certificate of airworthiness if it is —

(a) a glider not being used for the commercial air transport of passengers or aerial work other than aerial work which consists of the giving of instructions in flying or the conducting of flying tests in a glider owned or operated by a flying club of which the person giving the instruction or conducting the test and person receiving the instruction are members;

(b) a balloon flying on a private flight;

(c) a kite;

(d) a powered parachute;

(e) an aircraft flying in accordance with a permit to fly issued by the Authority; or

(f) an aircraft flying in accordance with a special flight permit issued by the Authority.

(3) The Minister may, on the recommendations of the Authority, make regulations providing for the issuing of certificates of airworthiness.

(4) Any person who flies or operates an aircraft which does not have a certificate of airworthiness commits an offence and shall be liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

#### PART VIII — *Air Operator Certificate*

Air operator  
certificate

**47.** (1) A person shall not conduct air transport operations unless that person —

(a) holds an air operator certificate for the type of service operated as may be issued by the Authority; or

(b) holds an air operator certificate for the type of service operated as may be issued from another State.

(2) The Minister may, on the recommendations of the Authority, make regulations providing for the issuing of air operator certificates.

(3) Any person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

#### PART IX — *Licensing of Pilots, Crew and Other Personnel*

Licensing of  
pilots, crew,  
etc.

**48.** (1) A person shall not act as a pilot or member of a flight operating crew in an aircraft engaged in the operation of an aircraft unless that person —

(a) holds a licence issued by the Authority under this Act;

(b) holds a foreign licence recognised by the Authority; or

(c) operates a kite or powered parachute exempted in section 44.

(2) A person shall not act as a member of a cabin crew unless he or she has —

(a) obtained authorisation from the Authority to exercise the privileges of cabin crew or has otherwise been permitted by the Authority to exercise such privileges; or

(b) obtained authorisation or permission from another State which has been recognised by the Authority.

(3) A person shall not act as an aircraft maintenance engineer or air traffic controller unless that person holds a licence issued by the Authority under this Act.

(4) The Minister may, on the recommendation of the Authority, make regulations for —

(a) the issuance of licences to flight crew, ground staff, aircraft maintenance engineers and air traffic controllers; and

(b) the training and authorisation of cabin crew.

(5) Any person who contravenes the provisions of subsection (1) and

(2) commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

**PART X — *Air Transport Service Licences, Authorisations,  
Permits and Approvals***

- 49.** (1) A person shall not provide air services unless the person —
- (a) holds a licence issued by the Authority in terms of this Act;
  - (b) obtains from the Authority, an operating authorisation in the case of foreign air operators designated under any air service agreement to which Botswana is a party;
  - (c) obtains from the Authority, an approval for use of a foreign registered aircraft by a Botswana licensed air operator; or
  - (d) obtains from the Authority, an operating permit for the carrying out of aerial work in Botswana by a foreign based operator.

Air transport  
service licence

(2) Notwithstanding the provisions of the Civil Aviation Regulation (Reform) Act, the Authority may issue licences for air transport services to one or more Botswana operators.

Cap. 71:03

(3) The Minister may, on the recommendations of the Authority, make regulations providing for the issuance of licences, authorisations, approvals or permits required under subsection (1).

(4) Any person who undertakes any of the activities specified under this section without a licence, an authorisation, approval or permit commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

**50.** (1) A person shall not perform aerial work on a flight for hire or reward unless the person holds a permit issued in terms of this Act.

Aerial work  
permit

(2) The Minister may, on the recommendations of the Authority, make regulations providing for the granting of a permit for the performance of aerial work on a flight.

(3) Any person who performs aerial work on a flight without a permit commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

**PART XI — *Air Routes and Airways***

**51.** (1) A person shall operate an aircraft on authorised air routes and airways.

Air routes and  
airways

(2) The Minister may, on the recommendation of the Authority, make regulations specifying routes and airways for operation of aircraft.

(3) Any person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

**PART XII — *Aircraft Maintenance and Aviation Training  
Organisations***

**52.** (1) A person shall not engage in or carry out the maintenance of aircraft, aircraft components or aircraft materials or the manufacture of parts for the purpose of maintenance or associated training activities without a certificate of approval issued by the Authority under this Act.

Certification of  
aircraft  
maintenance  
organisations

(2) The Minister may, on the recommendation of the Authority, make regulations regarding the certification of aircraft maintenance organisations.

(3) Any person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding ten years, or to both.

Certification  
of aviation  
training  
organisations

**53.** (1) A person shall not operate or hold out as an aviation training organisation without an aviation training certificate issued by the Authority under this Act.

(2) The Minister may, on the recommendation of the Authority, make regulations regarding the issuing of certificates for aviation training organisations and training specifications.

(3) Any person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

### PART XIII — *Aerodromes*

Establishment  
of aerodromes

**54.** (1) The Authority may establish and maintain aerodromes and provide in the aerodromes roads, approaches, apparatus, equipment, buildings and other accommodation.

(2) The Authority, in the establishment and maintenance of aerodromes, shall consult with —

- (a) the local authorities in whose areas the aerodrome or any part thereof is situated;
- (b) other local authorities whose areas are in the neighbourhood of the aerodrome; and
- (c) other organisations representing the interests of persons concerned with the locality in which the aerodrome is situated.

Private  
aerodromes

**55.** (1) A person shall not establish a private aerodrome unless that person has a certificate issued under this Act.

(2) The Minister may, on the recommendation of the Authority, make regulations to provide for the issuing of licences for private aerodromes.

(3) Any person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

Public use of  
aerodromes

**56.** (1) A person shall not open an aerodrome for public use unless an aerodrome certificate for that aerodrome has been issued by the Authority under this Act.

(2) The Minister may, on the recommendation of the Authority, make regulations to provide for the certification of aerodromes.

(3) Any person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

Customs,  
immigration  
and health  
services

**57.** (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 shall be determined by agreement between the Authority and the Government authority or agency concerned.

#### PART XIV — *Safety*

**58.** The Authority shall set and maintain safety standards related to personnel, aircraft, aerodromes and air navigation services which meet international standards under the Chicago Convention.

Safety standards

**59.** (1) The Authority shall have the power to direct the owner, operator, pilot in command or other member of the flight operating crew not to fly or operate an aircraft where, in the opinion of the Authority —

Power to prevent flight

- (a) the aircraft is not airworthy;
- (b) the pilot in command or member of the flight operating crew is not qualified or is not physically or mentally capable to operate the aircraft for flight; or
- (c) the operation poses or may cause imminent danger to persons or property on the ground.

(2) The Authority may, subject to subsection (1) take such steps as are necessary to detain such aircraft, pilot in command or member of the flight operating crew of the aircraft.

**60.** The Authority or any person authorised by it shall have the right of access to —

Right of access

- (a) aircraft for the purpose of assessing aircraft airworthiness;
- (b) any aviation facility including aerodromes, aircraft manufacturing organisations, aircraft maintenance organisations, aviation training organisations or other facilities in respect of which a certificate, permit or license is issued under the Act for carrying out any tests or inspections in order to determine that those operations are conducted in accordance with this Act; or
- (c) aircraft operators to conduct any tests or inspections in order to determine whether operations are conducted in accordance with this Act.

**61.** (1) The Authority may assess the safety of air transport operations by foreign air operators in Botswana.

Safety assessment for foreign air operators

(2) The Minister may, on the recommendation of the Authority, make regulations regarding the safety of operations and surveillance of foreign air operators operating in Botswana.

(3) The Authority shall have access to search a foreign aircraft without unreasonable delay, on landing or departure and to inspect the certificates and other documents prescribed under the Chicago Convention for the purposes of ensuring that the aircraft is being operated safely.

(4) The Authority may, subject to subsection (5) and where necessary, direct the operator or pilot in command of a foreign aircraft operating within Botswana, not to operate an aircraft where it is unsafe to do so or where the aircraft is likely to be operated in an unsafe manner.

(5) The Authority shall take such steps as are necessary to detain or prevent the flight of such aircraft and to notify the State of registry and the State of the operator as the case may be.

Transfer of  
state of  
registry  
functions and  
duties

**62.** (1) The Authority may enter into an agreement on behalf of Botswana with another state relating to the transfer of functions and duties of a state of registry in respect of an aircraft operated pursuant to an agreement for the lease, charter or interchange of the aircraft or similar arrangement.

(2) The Minister may, on the recommendation of the Authority, make regulations relating to the operation of aircraft pursuant to an agreement for the transfer of functions and duties of a state of registry under Article 83 *bis* of the Chicago Convention.

Land use  
restrictions

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

- (a) extinguishing any private right of way over land;
- (b) restricting the use of certain electronics on any land near an aerodrome or airport; and
- (c) as to the zoning of any area of land.

(2) The Minister may provide offences and penalties not exceeding a fine of P 5 000 000 or imprisonment for a term not exceeding 10 years or both, in respect of the contravention of any of the regulations made under the provisions of this section.

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

(4) The Minister shall cause notice of every zoning regulation referred to in subsection (1) (c) that is proposed to be made to be published once a week, for two consecutive weeks, in at least one local newspaper 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*.

(5) 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.

General  
control of  
buildings

**64.** (1) Any person who proposes to erect or modify any building or other installation which —

- (a) will adversely affect —
  - (i) the performance of radio, radar or navigational aids, or
  - (ii) the published instrument approach to land procedures; or
- (b) will necessitate a probable change in the published procedures concerning air navigation; or

(c) will be in contravention to the restrictions or servitudes by virtue of the regulations made under this Act, shall notify the Minister in writing at least ninety days prior to the proposed commencement of such intention and the notice shall contain the precise details on the nature, position and height of such proposed building or other installation.

(2) Any person who contravenes subsection (1) or fails to give such notice or wilfully makes any false statement commits an offence and is liable to a fine not exceeding P5 000 000, or imprisonment for a term not exceeding 10 years, or to both.

(3) The Minister may, within 60 days of receipt of a notice under subsection (1), by order, in writing —

(a) require the owner or other person responsible for the erection or modification of such building or other installation to light or otherwise mark the same in such manner as the Minister may direct; or

(b) prohibit the erection of such building or other installation.

(4) The Minister may order any person who has erected or extended or caused to be erected or extended any works contrary to the provisions of this section, to light, mark, modify, demolish or remove such works within such period, not being less than thirty days, as may be specified in the order.

(5) If any person fails to comply with an order served on him or her under subsection (4), it shall be lawful for the Minister to cause such works to be lighted, marked, modified, demolished or removed and to recover the cost of the lighting, marking, modification, demolition or removal from the person in default by civil suit.

**65.** (1) The Minister may direct that an owner of a building, structure or erection within such vicinity of an airport or aerodrome as may be prescribed, provide a sign (whether by lighting or otherwise) for giving to an aircraft warning of the presence of that building, structure or erection in order to avoid danger to an aircraft flying in that vicinity in darkness or conditions of poor visibility.

Control of  
buildings near  
aerodromes

(2) The Minister may direct, subject to any conditions, that the owner of the building, structure or erection, or any person acting under the owner's instructions —

(a) execute, install, maintain, operate, and as occasion requires, to repair and alter, such works and apparatus as may be necessary for enabling such warning to be given in the manner specified; and

(b) as far as may be necessary for exercising any of the powers conferred by the direction to enter upon and pass over (with or without vehicles) such land as may be specified in the direction:

Provided that no direction shall be given in relation to any building, structure or erection if it appears to the Minister that there have been made, and are being carried out, satisfactory arrangements for the giving of such warning as to the presence of the building, structure or erection.

- (3) The Minister shall, before giving any direction —
- (a) cause to be published, in a manner as he or she thinks best for informing any concerned persons, notice of the proposal to give the direction and of a place where copies of the proposed direction may be obtained free of charge; and
  - (b) take into consideration any representations with respect to the direction which may, within such period not being less than two months after the publication of the notice as may be specified therein, be made to him or her by any person appearing to him or her to have an interest in any land which would be affected by the direction; and at the end of that period the direction may, subject to the provisions of this section, be made with such modifications, if any, of the original proposal as the Minister thinks proper.
- (4) Every direction shall provide —
- (a) that, except in a case of emergency, no works shall be executed on any land in pursuance of the direction unless, at least 14 days previously, the owner of the airport to which the direction relates has served in the manner prescribed by the direction on the occupier of that land, and on every person known by the owner to have an interest, a written notice containing such particulars of the nature of the proposed works, and the manner in which and the time at which it is proposed to execute them, as may be prescribed by or in accordance with the direction; and
  - (b) that if, within 14 days after service of the said notice on any person having such an interest, the owner of the airport receives a written intimation of objection on the part of that person to the proposals contained in the notice, being an intimation which specifies the grounds of objection then, unless and except in so far as the objection is withdrawn, no steps shall be taken in pursuance of the notice without the specific sanction of the Minister; and
  - (c) that the owner of the airport to which the order relates shall pay any person having an interest in the land affected by the direction such compensation for any loss or damage which that person may suffer in consequence of the direction as may, in default of agreement, be determined by a single arbitrator in accordance with the Arbitration Act, who shall have exclusive jurisdiction.
- (5) For the purposes of subsection (4), any expense reasonably incurred in connection with the lawful removal of any apparatus installed in pursuance of such a direction, and any expense incurred in connection with the repair, alteration, demolition or removal of any building, structure or erection to which such a direction relates as is attributable to the operation of the direction, shall be deemed to be loss or damage suffered in consequence of the direction.

(6) Ownership of a thing that is placed in, or affixed to any land in pursuance of the direction shall not be affected by reason only that it is so placed or affixed on such land; and (subject to subsection (8)) so long as the direction in respect of an aerodrome is in force, no person shall, except with the consent of the owner of the airport or aerodrome, wilfully interfere with any works or things which, to the knowledge of that person, are works or things executed or placed in, on or over any land in pursuance of the direction.

(7) Any person who —

(a) contravenes subsection (6); or

(b) wilfully obstructs a person in the exercise of any of the powers conferred by such a direction,

commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

(8) Nothing in this section shall operate, in relation to any building, structure or erection, so as to restrict the doing of any work for the purpose of repairing, altering, demolishing or removing the building structure or erection:

Provided that —

(a) notice of the carrying out of that work is given within a reasonable time to the owner of the aerodrome or airport; and

(b) the giving of warning of the presence of the building, structure or erection in the manner provided by any order under this section in force in relation thereto is not interrupted.

**66.** (1) The Minister may, if he or she is satisfied that it is necessary to do so in order to secure the safe and efficient use for purposes of aviation, authorise by Order published in the *Gazette*, the closure or diversion of any road leading or next to any aerodrome, airport or any premises approved by him or her to be used for the testing of aircraft.

Closure of  
roads

(2) An Order made under subsection (1) may provide for all or any of the following matters —

(a) for securing the provision or improvement of any road so far as the Minister thinks such provision or improvement necessary or desirable in consequence of any stopping up or diversion;

(b) for the retention or removal of any cables, mains, pipes, wires, or similar apparatus placed along, across, over or under any road stopped up or diverted under the Order, and for the extinguishing, modification or preservation of any rights as to the use or maintenance of that apparatus; or

(c) if any road is to be provided or improved under the order, for authorizing or requiring the provision of any such apparatus along, across, over or under that road in lieu of any apparatus removed from a road in pursuance of the Order, and for conferring rights as to the use or maintenance of the apparatus so provided.

(3) An Order made under subsection (1) may contain such consequential, incidental and supplemental provisions as appears to the Minister to be necessary or expedient for the purposes of the Order.

**67.** Notwithstanding the Fire Services Act, the Authority shall provide adequate fire fighting and rescue services at aerodromes and on facilities at aerodromes.

#### PART XV — *Aircraft Accidents and Incidents Investigations*

**68.** (1) The Minister shall have jurisdiction over —

- (a) the investigation of any accident or incident, arising out of, or in the course of, air navigation and either occurring in or over Botswana or occurring elsewhere to an aircraft registered in Botswana; and
- (b) the collection, evaluation, processing, storing and dissemination of reports of any accident or incident.

(2) Notwithstanding any provision under this Act or any other enactment, where an accident or incident involves a state aircraft and a civil aircraft, or a civil aircraft at an aerodrome used principally for state aircraft or occurs while a state aircraft was on or in the course of taking off from an aerodrome used for purposes of civil aviation this Act shall apply.

(3) The Minister may make regulations for —

- (a) provision of facilities and services in support of the investigation of accidents and incidents;
- (b) notices to be given of any accident or incidents to or by such persons as may be prescribed;
- (c) investigation of any accident or incident arising out of or in the course of air navigation and either occurring in or over Botswana or occurring elsewhere to aircraft registered in Botswana;
- (d) participation of any persons authorised for that purpose in accordance with any investigation held in accordance with the requirements of Annex 13 to the Chicago Convention by the competent authorities of any other State;
- (e) investigation of any incident other than one to which paragraph (d) applies for the purpose of securing any information, article or other material which it is the duty of Botswana to furnish to any other State in accordance with the requirements of Annex 13 to the Chicago Convention;
- (f) prohibiting, pending investigation, access to or interference with aircraft to which an accident or incident has occurred and authorising any person, so far as may be necessary for the purposes of an investigation, or for the purpose of determining whether an investigation should be held, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with, any such aircraft;
- (g) enabling a person in charge of an investigation or other inquiry to grant immunity to any person giving evidence in the course of such investigation or inquiry from prosecution for offences disclosed by or arising from such evidence;

(h) providing for any other matters arising from Annex 13 to the Chicago Convention; and

(i) or the conduct of public inquiries into accidents and incidents.

**69. (1)** There is established, under the Minister, a Directorate of Accident Investigation which shall be responsible for the investigation of accident and incidents.

Establishment  
of Directorate  
of Accident  
Investigation

(2) The Directorate of Accident Investigation shall be headed by the Director of Accident Investigation who shall be appointed by the Minister on such terms and conditions as may be specified in the instrument of appointment.

(3) The Directorate of Accident Investigation shall incur such expenses as the Director may, with the approval of the Minister, determine.

**70.** The Director shall be responsible for —

(a) the direction, control and administration of the Directorate;

(b) determining, in the event of an occurrence of an accident or incident, whether or not an investigation shall be carried out;

(c) submitting reports to the Minister of any accident or incident investigation;

(d) issuing notices to the appropriate persons following the occurrence of an accident or incident; and

(e) any other function conferred upon him or her by the Minister or under any other law.

Functions of  
Director of  
Accident  
Investigation

**71. (1)** The Director shall, with the approval of the Minister, appoint on a full-time or part-time basis for the purposes of conducting accident and incident investigations such number of Accident Investigators and other support personnel as may be necessary to discharge the functions of the Directorate.

Accident  
Investigators

(2) An Accident Investigator shall be a person properly trained in the investigation of aircraft accidents.

**72.** The Director and Accident Investigators shall, for purposes of investigating an accident or incident —

Powers of  
investigation

(a) have access to —

(i) the site of the accident or incident as well as to the aircraft involved in the accident or incident, parts of such aircraft, its contents or its wreckage and to any flight recorders and other recording relating to the flight,

(ii) the results of the medical examination of the bodies of victims or of tests made on samples taken from the bodies of victims,

(iii) the results of medical examinations of the persons involved in the operation of the aircraft or of tests made on samples taken from such persons, and

(iv) any relevant information or records held by the owner, the operator or the manufacturer of the aircraft and by the owner or operator of an aerodrome or air navigation installation or the civil aviation authorities.

(b) have power to —

- (i) summon and examine all such persons as he or she thinks fit and to require such persons to answer any question or furnish any information or produce any books, papers, documents and articles which the Accident Investigator may consider relevant and to retain any such books, papers, documents and articles until the completion of the investigation,
- (ii) take statements from all such persons as he or she thinks fit and to require any such person to make and sign a declaration as to the truthfulness of the statement made by him or her,
- (iii) enter and inspect any place, building or aircraft the entry or inspection whereof appears to the Accident Investigator to be requisite for the purposes of the investigation,
- (iv) require the medical examination of the bodies of victims,
- (v) require the persons involved in the operation of an aircraft to submit to a medical examination,
- (vi) examine, remove, test, take measures for the preservation of or otherwise deal with any aircraft involved in an accident or incident for the purposes of the investigation, and
- (vii) take such measures for the preservation of evidence as he or she considers appropriate.

Report of  
investigation

**73. (1)** On completion of an investigation into an accident or incident the Director shall prepare a report of the investigation and submit it to the Minister.

(2) The Director shall, prior to submitting a final report to the Minister, provide a copy of the draft report or a relevant part thereof on a confidential basis to the civil aviation authorities, operator of the aircraft involved in the accident or incident, the owner or operator of the aerodrome at which the accident or incident occurred where applicable, and to any other person who has a direct interest or whose reputation is likely to be adversely affected by the report and consider any representations that may be made to him or her by or on behalf of any such persons.

Publication of  
report

**74.** The Minister shall determine whether a report or a part of it shall be made public and shall cause such report to be published in such form and manner as he or she thinks fit.

Privilege

**75. (1)** The sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents and not to apportion liability or blame.

(2) The report or any part of it shall not be admissible as evidence in any legal, disciplinary or other proceedings.

(3) The following shall not be made available to any person unless the High Court determines that their disclosure outweighs the adverse domestic and international impact such action may have on that or any future investigations —

- (a) statements taken from persons by the accident investigators in the course of their investigation;
- (b) communications between persons having been involved in the operation of the aircraft;
- (c) medical or private information regarding persons involved in the accident or incident;
- (d) cockpit voice recordings and transcripts from such recordings; and
- (e) opinions expressed in the analysis of information, including flight recorder information.

(4) An Accident Investigator shall not be compelled to appear as a witness, and the opinion of the Accident Investigator shall not be admissible in any legal, disciplinary or other proceedings relating to an accident or incident investigation.

**76.** Any person who contravenes any regulations made under this Act or without lawful excuse wilfully resists or otherwise obstructs an Accident Investigator in the execution of his or her powers and duties under this Act or the regulations or knowingly gives false or misleading information to any inspector or investigator under this Act or makes a report of an accident or incident knowing that such report is false or misleading commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment to a term not exceeding 10 years, or to both.

Failure to cooperate during investigation

**77.** The Minister may, where he or she considers it necessary in the public interest, institute a public inquiry into an accident or incident and such inquiry shall not, unless in the opinion of the Minister exceptional circumstances require, be conducted until such time as a report has been submitted to the Minister after completion of an investigation.

Public Inquiry

## PART XVI – Charges

**78.** (1) Subject to subregulation (10), 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.

Charges

(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) the issuance, renewal or variation of personnel licences;
- (c) aerodrome inspection, certification and licensing;
- (d) inspection of aircraft;
- (e) aircraft landing and parking;
- (f) aircraft registry services;
- (g) air navigation and communications;
- (h) fuel handling;
- (i) passenger services;
- (j) air operator’s certificates;

- (k) the approval of aircraft maintenance organisations and aviation training organisations;
- (l) noise and environmental pollution;
- (m) air transport licences;
- (n) traffic handling;
- (o) aircraft handling;
- (p) security services for air transport services;
- (q) any other services related to the operation of aerodromes;
- (r) use or rental of any assets of the Authority; and
- (s) any other services related to its functions under this Act.

(3) The scheme referred to in subsection (1) shall be submitted to the Minister for information only before being published in the AIC in terms of subsection (4).

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

(5) The Authority may change and revise charges and submit such changes or revisions of the charges to the Minister before publication in the AIC in accordance with subsection (4).

(6) 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 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.

(7) 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 and the Authority shall retain the aircraft or property until payment is made in full.

(8) If the total amount due remains unpaid for a period of sixty 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 or property in accordance with such procedure as the Minister may, by statutory instrument, prescribe.

(9) The charge referred to under subsection (6) shall be reasonably related to expenses incurred, or to be incurred, by the Authority in relation to the provision of a service or facility.

(10) Notwithstanding subsection (1), the Authority may determine non aeronautical charges or charges other than regulatory charges through a bidding process.

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

(2) The Appeals Tribunal shall comprise not more than five 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) Members may be appointed on a full-time or a part-time basis and where appointed on a full-time basis, the appointment shall be for not more than three years.

(4) A member shall not qualify for appointment as a member of the Appeals Tribunal if he or she is regulated by the Authority or has an interest in an entity which is regulated by the Authority.

(5) The provisions of sections 16 to 18, 20 to 24 and 26 shall apply with necessary modification to the members of the Appeals Tribunal.

**80.** (1) Any person who is aggrieved by a decision of the Authority for anything relating —

- (a) to any general regulatory decision that is made by the Authority under this Act;
- (b) specifically to the issue of a licence, permit, certificate, registration, approval or any authorisation under this Act or regulations made under this Act; or
- (c) to any regulatory decisions made under any applicable enactment, may appeal against that decision to the Appeals Tribunal.

(2) Every appeal under this section shall be lodged with the Appeals Tribunal, in such form and manner as the Appeals Tribunal may require together with the prescribed fee, not later than 14 days immediately after the day on which the decision complained of was communicated to the appellant by the Authority.

**81.** (1) The Appeals Tribunal shall consider every appeal lodged with it under section 80.

(2) The Appeals Tribunal shall also have the power to review any regulatory decision of the Authority in respect of which a notice has been lodged with it in terms of section 80 (2).

(3) Any person aggrieved by a decision of the Appeals Tribunal in dismissing his or her appeal to it, or in respect of any variation or alteration in the conditions of a licence, permit or certificate issued to him or her, may appeal that decision to the High Court.

Liability

**82.** Aerodromes established or licensed by the Authority shall be made available for use by any person on condition that the use is entirely at the risk of the person concerned and that neither the Authority, the licensee nor the Government, shall be held responsible for loss or damage resulting from the use of the aerodrome or its accessory facilities by any other person.

Dangerous flying

**83.** (1) A person who flies or operates an aircraft in such a manner as to cause danger to any person or property on land or water commits an offence and is liable, for a first offence to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both, and for a second or subsequent offence, to a fine not exceeding P7 000 000, or to imprisonment for a term not exceeding 15 years, or to both.

(2) In any proceedings against the owner of an aircraft in respect of an offence under this section, it shall be a defence to prove that the act constituting the offence was done without the knowledge or consent of the owner.

(3) In this section, “owner”, in relation to an aircraft and an offence, includes any person by whom the aircraft is hired at the time the offence was committed.

Trespass by aircraft

**84.** (1) No action shall lie in respect of trespass or nuisance by reason only of, or of the ordinary incidents of, the flight of an aircraft over any property at a height above the ground which is reasonable having regard to wind, weather and all the circumstances of the case so long as the provisions of regulations in force made under this Act are complied with.

(2) Where loss or damage is caused to any person, property, land or water by a person in or an article or person falling from, an aircraft while in flight, taking off or landing, then, without prejudice to the law relating to contributory negligence, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft:

Provided that where loss or damage is caused in circumstances in which —

- (a) damages are recoverable from the owner in respect of the loss or damage by virtue only of the preceding provisions of this subsection; and
- (b) a legal liability is created in some person other than the owner to pay damages in respect of the loss or damage,

the owner shall be entitled to be indemnified by that other person against any claim in respect of the loss or damage.

(3) Where an aircraft has been genuinely demised, let or hired out for any period exceeding fourteen days to any other person by the owner of the aircraft and no pilot, navigator or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as if for references to the owner there were substituted references to the person to whom the aircraft has been demised, let or hired out.

Action for  
nuisance

85. No action for nuisance shall lie by reason only of the noise and vibration caused by aircraft on an aerodrome or an airport so long as the provisions of regulations made under this Act in respect of that aerodrome are complied with.

86. (1) No aircraft to which this section applies, making any lawful entry into Botswana or any lawful transit across Botswana, with or without landings, shall be seized or detained, nor shall any proceedings be taken against the owner or operator of the aircraft, nor shall the aircraft be otherwise interfered with by or on behalf of any person in Botswana, on the ground that the construction, mechanism, parts, accessories or operations of the aircraft is or are an infringement of any patent, industrial design or utility model.

Aircraft  
and spares  
not liable  
to seizure

(2) The importation into, and storage in Botswana of spare parts and spare equipment for an aircraft to which this section applies and the use and installation in the repair of the aircraft shall not entitle any seizure or detention of the aircraft or of the spare parts or spare equipment or any proceedings against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Botswana on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, industrial design or utility model.

(3) Subsections (1) and (2) shall apply —

- (a) to any aircraft registered in a country or territory which is a party to the Chicago Convention; and
- (b) to such other aircraft as the Minister may, by Order published in the *Gazette*, specify:

Provided that subsection (2) shall not apply in relation to any spare parts or spare equipment which are sold or distributed in Botswana.

(4) Any interested person may bring proceedings for detention, seizure or infringement against an owner or operator of an aircraft which is not an aircraft to which subsection (1) applies which is making a passage through or over Botswana if the aircraft or a part of it infringes any patented invention, industrial design or utility model which is protected in Botswana.

(5) The court may detain the aircraft until the owner deposits or secures in respect of the alleged infringement a sum (in this section referred to as “the deposited sum”).

(6) Where an owner pays the deposited sum under subsection (5), the aircraft shall not, during the continuance of passage, be subject to any lien, arrest, detention or prohibition, whether by order of a court or otherwise, on account of the alleged infringement.

(7) For purposes of this section, the expression “owner” includes the actual owner of the aircraft and any person claiming through or under him or her, and the expression “passage” includes all reasonable landings and stoppages in the course of the passage.

Entity in which Authority has interest not to contravene Act

**87.** 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.

Offences

**88.** (1) Any person who contravenes the provisions of this Act, or any regulations, bye-law or requirement made in terms of this Act, or any notice or information issued by the Authority in terms of this Act for which a penalty is not provided for, commits an offence and is liable to a fine not exceeding P5 000 000, or to imprisonment for a term not exceeding 10 years, or to both.

(2) The Authority may impose an administrative penalty of an amount not exceeding that specified in subsection (1) where a person contravenes any of the provisions of any regulations, bye-laws, requirements, directives, notices, circulars or information made under this Act.

Regulations

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

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

(a) relating to —

- (i) the licensing of crews engaged in the operation of aircraft,
- (ii) the issuing of air operator certificates,
- (iii) the licensing of civil aviation personnel,
- (iv) the licensing of air traffic controllers and operators of equipment used to provide services relating to civil aviation,
- (v) the issuing of certificates for aircraft maintenance and aviation training organisations,
- (vi) the designation of domestic and international air carriers,
- (vii) the provision of air navigation services,
- (viii) the establishment, construction and use, maintenance, development, operation and ownership of aerodromes,
- (ix) the licensing of private aerodromes,
- (x) the provision of rescue and fire fighting services at aerodromes,
- (xi) the co-ordination and direction of search and rescue services,
- (xii) the provision of assistance and information, including aeronautical information services,
- (xiii) the airworthiness of aircraft,
- (xiv) the registration of aircraft,
- (xv) the control of air traffic,
- (xvi) the provision of meteorological information to aircraft,

- (xvii) the publication and dissemination of all regulations pertaining to civil aviation,
- (xviii) the design, construction, maintenance, operation and use of aircraft and related equipment,
- (xix) the personnel engaged in the maintenance of aircraft and related equipment,
- (xx) the planning, establishment, maintenance, operation and use of air route and airway facilities, rescue and fire fighting services, and search and rescue services, and any construction associated with those facilities and services,
- (xxi) giving effect to, and carrying out, the provisions of the Chicago Convention, as amended from time to time,
- (xxii) public transport, aerial work and conditions for the carriage of cargo and passengers including the rights of passengers, consignees or consignors of cargo and the obligations of the air carriers in respect of such carriage and the prohibition of carriage by air of goods of such classes as may be prescribed,
- (xxiii) the minimising or preventing of interference with the use of, or the effectiveness of apparatus used in connection with air navigation or communications, and the prohibiting of, or the regulating of, the use of such apparatus and the display of such signs and lights as may endanger aircraft,
- (xxiv) the regulation of the making of signals and other communications by or to aircraft and persons carried in aircraft,
- (xxv) the prohibition, restriction or regulation of the carrying on of any trade or business within any aerodrome,
- (xxvi) the establishment and regulation of the conditions of use, including the charges to be made for the use of any aerodrome operated by the Authority,
- (xxvii) 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,
- (xxviii) any other functions that may be conferred on the Authority by the Minister,
- (xxix) the licensing of persons engaged in the design, manufacture, distribution, maintenance, approval, certification or installation of aeronautical products,
- (xxx) the installation, maintenance, approval and certification of equipment used to provide services relating to civil aviation,
- (xxxi) activities at aerodromes and the location of aerodromes,
- (xxxii) noise emanating from aerodromes and aircraft,
- (xxxiii) the conditions under which persons or personal belongings, baggage, goods or cargo of any kind may be transported by aircraft,
- (xxxiv) 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,

- (xxxv) the handling, marking, storage and delivery of fuel and any lubricants or chemicals used during or in connection with the operation of aircraft,
- (xxxvi) transport of dangerous goods, ammunition and munitions of war,
- (xxxvii) any other area that the Authority may consider necessary to ensure the safety of civil aviation, and
- (xxxviii) 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) for the mortgaging of an aircraft registered in Botswana or capable of being so registered, in particular —
  - (i) with respect to the rights and liabilities of a mortgagor and mortgagee of an aircraft,
  - (ii) in relation to the hire of the aircraft, or
  - (iii) enabling the mortgage of an aircraft to extend to any storage of spare parts for that aircraft;
- (d) for imposition of penalties;
- (e) 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 an aircraft coming from outside Botswana is to land and the conditions to which such aircraft is subject,
  - (vii) the classification and use of airspace and the control and use of air routes, and
  - (viii) rules of the air;
- (f) 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
- (g) regulating the location, establishment, use, maintenance, operation and security of aerodromes and the conduct of all persons while within aerodromes and in connection with the roads, approaches, apparatus, equipment, buildings and other accommodation on aerodromes, and, in particular —

- (i) relating to securing the safety of aircraft, vehicles and persons using the aerodromes and preventing danger to the public arising from the use and operation of an aerodrome,
- (ii) relating to the prevention of obstruction within an aerodrome,
- (iii) regulating vehicular traffic anywhere within the aerodrome, speed restrictions and parking limitations,
- (iv) prohibiting or restricting access of persons, vehicles or animals to any part of an aerodrome,
- (v) relating to the preservation of good order and conduct within an aerodrome 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 reveal his or her identity as well as the purpose of his or her presence at the airport, and
- (vii) for controlling the disposal of waste, international garbage and spilled fuel.

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

Exemption

**90.** (1) The Minister may, on such terms and conditions as he or she may consider necessary, exempt any person, aircraft, aerodrome, aviation facility or service, from application of any regulations, bye-laws, requirements, directives, notices or information made or issued under this Act, if the exemption is in the public interest and is not likely to affect aviation safety.

(2) The Minister may make regulations on the conditions and procedures under which an exemption may be granted.

(3) Any exemption granted under this section shall be published by notice in the *Gazette*.

(4) The Authority may, on such terms and conditions as it may consider necessary, and without publication in the *Gazette*, exempt any person, aircraft, aerodrome, aviation facility or service, from the application of any bye-laws, requirements, directives, notices or information made or issued under this Act, if is impracticable or temporarily inappropriate for operational purposes to comply with a particular requirement, directive, notice or information.

Powers of  
Minister  
in times  
of war

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

- (a) by Order published in the *Gazette*, regulate or prohibit, either absolutely or subject to such conditions as may be contained in the Order, navigation of all aircraft over Botswana;
- (b) by Order published in the *Gazette*, provide for taking of, and using for the purpose of the Government’s military forces, any aerodromes, or any aircraft, machinery, plant, material or things found on the aerodrome, and for regulating or prohibiting the use, erection, building, maintenance or establishment of any aerodrome, or flying school; and

(c) by Order published in the *Gazette*, require the following to be placed at the disposal of the Minister —

- (i) all or any of the property or rights of, or under the control of, the Authority,
- (ii) the whole or any part of the relevant undertaking of any Botswana air transport business, and
- (iii) all any property or rights of, or under the control of, any businesses which appertain to the undertaking under subparagraph (ii).

Acts done on  
Botswana  
aircraft  
outside  
Botswana

**92.** (1) Any act done by any person on a Botswana aircraft outside Botswana which, if it had been done by him or her 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 or her in Botswana.

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

#### PART XIX — *Transitional Provisions*

Repeal of  
Cap. 71:04

**93.** (1) The Civil Aviation Authority Act is hereby repealed.

(2) Notwithstanding the repeal under subsection (1), anything done or included in any contract concluded, or any action, taken or purported to have been done or taken under the said legal provisions so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) Any appointments for the membership of the Authority or Board or any contracts entered into by the Authority under the repealed Act shall continue to be in force as if made under this Act until their expiry.

(4) The regulations relating to the control and governance of civil aviation in existence prior to the commencement of this Act shall be deemed to be regulations made under this Act, in so far as they are not inconsistent with the provisions of this Act and shall remain in force until such time as the Minister may revoke or amend them in accordance with this Act.

PASSED by the National Assembly this 20th day of July, 2011.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*