

CIVIL AVIATION ACT
Act No. 11 of 2011

CIVIL AVIATION (APPEALS TRIBUNAL) REGULATIONS, 2012
(Published on 28th September, 2012)

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IN EXERCISE of the powers conferred on the Minister of Transport and Communications by section 89 (2) (a) (xxxviii) of the Civil Aviation Act, and on the recommendations of the Authority, the following Regulations are hereby made —

PART I — Preliminary

- Citation 1. These Regulations may be cited as the Civil Aviation (Appeals Tribunal) Regulations, 2012.
- Appointment of Chairperson 2. (1) The members of Appeals Tribunal shall appoint a Chairperson from among their number.
(2) The Chairperson may, by an instrument in writing, delegate to a Member all or any of his or her administrative functions under these Regulations.
(3) The power delegated under this regulation when exercised by the delegate shall, for all purposes of these Regulations, be deemed to have been exercised by the Chairperson.

PART II — Procedure of Appeals

- Appeals to Appeals Tribunal 3. (1) A person wishing to appeal against a decision of the Authority in terms of section 80 of the Act shall —
(a) lodge a notice of appeal, in the form set out in the Schedule accompanied by a fee of P200; and
(b) cause a copy of the notice of appeal to be served on the Authority and on any other person who has an interest in the decision that is the subject of appeal.
(2) Any appeal lodged more than the 14 days period stipulated in section 80 (2), shall be accompanied by reasons for late delivery, and the Appeals Tribunal shall determine whether it will consider the appeal, or whether, in the circumstances, it should be rejected.
- Lodging of documents by Authority 4. (1) Subject to this regulation, the Appeals Tribunal may, by notice in writing, require the Authority to lodge with the Appeals Tribunal any documents specified in the notice to the extent that those documents are in the Authority's possession or control and were used to inform Authority's decision which is the subject matter of the appeal.
(2) The Authority shall, within 14 days of receipt of a notice referred to in subregulation (1), lodge with the Appeals Tribunal two copies of —
(a) a statement giving the reasons for the decision; and
(b) any other document in the Authority's possession or control which informed the decision of the Authority.
(3) If an applicant fails, without reasonable excuse, to appear at the hearing of the proceedings, the Appeals Tribunal may dismiss the application.
- Hearing to be open to public 5. A hearing before the Appeals Tribunal shall be open to the public unless the Appeals Tribunal, on the request of either party, directs otherwise.
- Powers of Appeals Tribunal 6. (1) The Appeals Tribunal may —
(a) take evidence on oath;
(b) proceed in the absence of a party who has had reasonable notice of the proceeding; and
(c) adjourn the hearing at any time.

- (2) The Appeals Tribunal may summon a person to appear before it to —
 - (a) give evidence; or
 - (b) produce books, documents or things in the possession, custody or control of that person.
- (3) Where the Appeals Tribunal considers necessary, it may —
 - (a) receive evidence by affidavit; and
 - (b) administer interrogations and require the persons to whom interrogations are administered to make a full and true reply.
- (4) The Appeals Tribunal may make an order as to costs against any party, and the order shall be enforceable in like manner to an order of the High Court.

7. (1) Subject to the provisions of these Regulations, the Appeals Tribunal shall regulate its own proceedings:

Appeals Tribunal to regulate its own proceedings

Provided that all the parties to the proceedings shall have been advised by the Appeal Tribunal of the form of the procedure.

(2) The Appeals Tribunal shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

(3) Proceedings before the Appeals Tribunal may be conducted in accordance with such rules of practice and procedure as the Appeals Tribunal may specify, and it may direct the application of the rules of practice and procedure of any court of competent jurisdiction, subject to such modifications as it may direct.

(4) Proceedings before the Appeals Tribunal shall be recorded, and the record shall show all evidence taken and all determinations, decisions and findings made in respect of the proceedings.

(5) The Appeals Tribunal shall have such assistance from the Authority in carrying out its lawful writs, processes, orders, rules, decrees or commands as is available to a court of competent jurisdiction.

(6) The Appeals Tribunal shall not receive or accept or compel the production as evidence anything that would be inadmissible by a court of competent jurisdiction or is protected under the laws by reason of any privilege or public interest.

(7) The Rules of the High Court shall apply in determining any costs to be awarded for proceedings under these Regulations.

8. A party to the proceeding before the Appeals Tribunal may appear by a legal practitioner, or be represented by any other person so authorised by the party.

Representation before Appeals Tribunal

9. The Appeals Tribunal shall give a party to the proceedings an opportunity to present his or her case and, in particular —

Opportunity to make submissions concerning evidence

- (a) to inspect any document to which the Appeals Tribunal proposes to have regard in reaching a decision; and
- (b) to make submissions in relation to those documents.

10. An applicant may, by notice in writing, at any time, discontinue or withdraw the appeal lodged in accordance with section 81 (3).

Discontinuance, dismissal of application

Parties reaching agreement

11. If, at any stage during the proceedings, the parties reach an agreement to the terms of a matter or in relation to a part of the proceedings or a matter arising out of the proceedings and the Appeals Tribunal is satisfied that a decision in those terms is within the powers of the Appeals Tribunal, it may —

- (a) make a decision in accordance with those terms without holding a hearing or, if the hearing has commenced, without completing the hearing; or
- (b) give effect to the terms of the agreement without dealing at the hearing with that part of the proceeding or the matter arising out of the proceeding to which the agreement relates.

Operation and implementation of decisions subject to appeal

12. Where an appeal is lodged with the Appeals Tribunal, the Appeals Tribunal may make an order staying or otherwise affecting the operation or implementation of —

- (a) the decision under appeal; or
- (b) a part of the decision, for the purposes of securing the effectiveness of the proceeding and determination of the appeal.

Decision of Appeals Tribunal

13. (1) The Appeals Tribunal may —

- (a) affirm the decision of the Authority; or
- (b) vary or set aside the decision of the Authority and remit the matter to the Authority for reconsideration in accordance with any directions or recommendations of the Appeals Tribunal.

(2) The Appeals Tribunal shall give reasons for its decision and shall cause a copy of its decision to be served on each party to the proceedings and on any person with an interest in the decision.

(3) Subject to subregulation (5), a decision of the Appeals Tribunal shall come into operation upon the giving of the decision or on such other date as may be specified by the Appeals Tribunal.

(4) Where the Appeals Tribunal substitutes or varies a decision of the Authority, the decision as varied shall be deemed to be a decision of the Authority unless it orders otherwise.

(5) A decision of the Appeals Tribunal shall have effect as and be enforceable as if it were a decision of a court of competent jurisdiction.

(6) Subject to subregulation (8), a decision of the Appeals Tribunal shall be a public record and shall be open to the inspection by the public.

(7) Subject to subregulation (9), the Appeals Tribunal shall publish its decisions, including reasons, in such form and manner as may be adapted for public information and use, and such publication shall be evidence of the decisions of the Appeals Tribunal in all courts of Botswana without any further proof of authentication.

(8) The Appeals Tribunal shall not, in releasing, or allowing access to information under subregulation (6) or (7), disclose trade secrets or other confidential information.

(9) In any proceedings before the Appeals Tribunal, a decision of the majority of the members shall be the decision of the Appeals Tribunal.

PART III — *Offences and Penalties*

- 14.** A person who is served with a summons by the Appeals Tribunal under these Regulations and without reasonable excuse fails —
- (a) to appear as a witness before the Appeals Tribunal; or
 - (b) to produce a book, document or thing,
- commits an offence and is liable to a fine not exceeding P30 000 or to imprisonment for a term not exceeding one year, or to both.
- 15.** A person who appears as a witness before the Appeals Tribunal, and who without reasonable excuse, refuses or fails to answer a question that he or she is required to answer, commits an offence and is liable to a fine not exceeding P30 000 or to imprisonment for a term not exceeding one year, or to both.
- 16.** A person who appears as a witness before the Appeals Tribunal and who gives evidence that, to his or her knowledge, is false or misleading commits an offence and is liable to a fine not exceeding P30 000 or to imprisonment for a term not exceeding one year, or to both.
- 17.** A person who —
- (a) interrupts the proceedings of the Appeals Tribunal;
 - (b) creates a disturbance, or takes part in creating a disturbance in or near a place where the Appeals Tribunal is sitting; or
 - (c) does any other act or thing that would, if the Appeals Tribunal were a court of record, constitute a contempt of that court,
- commits an offence and is liable to a fine not exceeding P15,000 or to imprisonment for a term not exceeding six months, or to both.

Failure to
comply with
summons

Failure to
answer
questions

False or
misleading
evidence

Contempt
of Appeals
Tribunal

PART IV — *Miscellaneous Provisions*

- 18.** No action, suit, prosecution or any other proceeding may be brought or instituted personally against a person who is or was a Member of the Appeals Tribunal in respect of any act done or omitted to be done in good faith in the discharge of any function under these Regulations.

Immunity
from suit

SCHEDULE

NOTICE OF APPEAL

(reg. 3 (1) (a))

Appellant	
Date (DD/MM/YYYY)	
Date of contested decision (DD/MM/YYYY)	

Grounds of appeal attached
Extent of appeal decision contested in its entirety/ in part (specify to what extent) attached

Signature	
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Address	
Plot number/Ward	
Postal address	
Country	

Legal form of the entity (artificial or natural person)	
Name of legal entity or first name and surname	
ID number (natural person)	
Representative (legal practitioner)	
Address	

Plot number/Ward	
Postal address	
Country	

Notes

The contested decision must be clearly identified.

The appellant must file the statement of grounds of appeal with the notice of appeal.

The notice of appeal and statement of grounds must be filed in the English language.

The appeal form must be signed, dated and the name of the signatory must be indicated.

All documents must be filed in triplicate plus 1 original.

MADE this 17th day of September, 2012.

NONOFO MOLEFHI,
*Minister for Transport and
Communications.*