

CHAPTER 67:01
PETROLEUM (EXPLORATION AND PRODUCTION)

ARRANGEMENT OF SECTIONS

PART I

Preliminary

SECTION

1. Short title
2. Interpretation
3. Non-application to certain minerals
4. Petroleum vested in State
5. Constitution of blocks

PART II

Administration

6. Prohibition of disclosure of information
7. Public officer not to acquire or hold certain rights
8. Indemnity of officers
9. Retention of cores and samples
10. Preference for Botswana products, etc.

PART III

Licences

General

11. Restrictions on persons to whom licence may be granted
12. Agreement with respect to grant, etc. of licences
13. Applications to be made to Minister
14. Powers of Minister to obtain information
15. Form of licence
16. Reservation of blocks

Exploration Licences

17. Application for exploration licence
18. Disposal of application for exploration licence
19. Notification of grant or rejection
20. Form and content of exploration licence
21. Rights conferred by exploration licence
22. Term of exploration licence
23. Application for renewal of exploration licence
24. Application for renewal to be in respect of reduced area
25. Grant or refusal of renewal of exploration licence
26. Renewal of exploration licence in respect of locations
27. Conditions of grant of exploration licence

Discovery of Petroleum in Exploration Area

28. Discovery of petroleum to be notified
29. Directions of Minister on discovery of petroleum
30. Nomination of block for purpose of declaring location
31. Declaration of location
32. Investigations of locations
33. Removal and disposal of petroleum

Development Licences

34. Application by registered holder of exploration licence for development licence

- 35. Application for development licence
- 36. Disposal of application for development licence
- 37. Restrictions on grant of development licence
- 38. Notice of decision on application for development licence
- 39. Content of development licence
- 40. Rights conferred by development licence
- 41. Duration and renewal of development licence
- 42. Revocation of declaration of location
- 43. Unit development
- 44. Directions as to recovery of petroleum
- 45. Trading in development area

Restrictions on Exercise of Rights under Licences

- 46. Restrictions on exercise of rights

Surrender, Cancellation or Suspension of Licences

- 47. Surrender of area or part thereof covered by licence
- 48. Minister's power to suspend or cancel a licence

Transfers and Registration

- 49. Records
- 50. Interest in licence to be created by instrument in writing
- 51. Transfer, etc. of licence to be approved by Minister
- 52. Minister may require additional information
- 53. Evidence

Miscellaneous

- 54. Application of Schedule
- 55. Work practices for registered holder of licence
- 56. Work practices for holder of notice of consent
- 57. Wasteful production and processing practices
- 58. Penalty for breach of section 55 or 56
- 59. Maintenance, etc. of property
- 60. Drilling near boundaries
- 61. Directions
- 62. Compliance with directions
- 63. Removal of property, etc. by registered holder
- 64. Removal and sale of property, etc. by Minister
- 65. Penalty for default in payment
- 66. Survey of wells, etc.
- 67. Scientific investigations
- 68. Restriction on transfer of shares

PART IV

Surface Rights

- 69. Right to graze stock, etc.
- 70. Acquisition of exclusive rights by registered holder of development licence
- 71. Compensation for disturbance of rights, etc.
- 72. Compulsory acquisition of land

PART V

Financial

- 73. Royalty on petroleum obtained under development licence
- 74. Provisional royalty
- 75. Prohibition on disposal of petroleum

- 76. Remission of royalty, etc.
- 77. Recovery of royalty, etc.
- 78. Annual fee in respect of licence
- 79. Security for compliance

PART VI
Miscellaneous

- 80. Minister may require information to be furnished
- 81. Failure to furnish information, etc. under section 80
- 82. Power of entry, etc.
- 83. Offences in relation to section 82
- 84. Obstruction of registered holder of licence
- 85. Offence committed by company
- 86. Miscellaneous offences
- 87. General penalty

PART VII
Regulations

- 88. Regulations

Schedule - Records, Reports and Accounts

Act 12, 1981
S.I. 56, 1983.

An Act to make provision relating to the exploration for and exploitation of petroleum resources and for purposes incidental thereto or connected therewith.

[Date of Commencement: 13th May, 1983]

PART I
Preliminary (ss 1-5)

1. Short title

This Act may be cited as the Petroleum (Exploration and Production) Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"authorized officer" means a person appointed under section 88;

"block" means a block constituted as provided by section 5;

"development area" means an area of land subject to a development licence;

"development licence" means a licence granted under section 36;

"development operations" means operations for or in connection with the production of petroleum;

"drilling" means the perforation of the earth's surface, whether the hole is vertical, inclined or horizontal, and includes all operations for preventing the collapse of the sides of the hole or for preventing the hole from becoming filled by any extraneous material (including water) and the fitting of wellheads, or coring or logging, and any operations incidental thereto;

"exploration area" means an area of land subject to an exploration licence;

"exploration licence" means a licence granted under section 18;

"exploration operations" means operations for or in connection with the exploration for petroleum;

"good oil field practices" means those things which are generally accepted as good, safe and efficient in the carrying on of exploration or development operations;

"in default" means in breach of a provision of this Act or of a condition of a licence, or of a condition of an agreement under section 12;

"land" includes land beneath water;

"licence" means an exploration or a development licence;

"location" means a block in respect of which a declaration under section 31 is in force;

"petroleum" means any naturally occurring-

- (a) hydrocarbon;
- (b) mixture of hydrocarbons; or
- (c) mixture of one or more hydrocarbons and any other substance,

whether in gaseous, liquid or solid form, and includes petroleum which has been returned to a natural reservoir, but does not include coal or a substance which may be extracted from coal;

"petroleum reservoir" means a natural occurring discrete accumulation of petroleum in any form whatsoever;

"processing" does not include refining of petroleum;

"registered holder", in relation to a licence, means the person whose name is for the time being recorded pursuant to section 49 or 51(5);

"well" means a hole made by drilling in land or the subsoil of land in connection with exploration or development operations, but does not include a seismic shot hole.

(2) Where in this Act provision is made for a matter to be referred to arbitration-

- (a) the matter shall be referred to a single arbitrator appointed by the parties;
- (b) in the event of the parties being unable to agree on a single arbitrator, each party shall choose an arbitrator, and the arbitrators so chosen shall choose an umpire;
- (c) the arbitration proceedings shall be conducted in accordance with the Arbitration

Act.

(3) Where in this Act any application, report or other document is required to be submitted to the Minister, such application report or document shall be submitted-

- (a) in the case of an exploration licence, through the Director of Geological Survey; and
- (b) in the case of a development licence, through the Mining Commissioner.

3. Non-application to certain minerals

A right to search for or mine any mineral, as defined in section 2 of the Mines and Minerals Act, shall not be granted or exercised under this Act.

4. Petroleum vested in State

(1) The entire property in and control over petroleum in any land are hereby vested in the Republic.

(2) Subject to section 67, no person shall carry on in any land any exploration or development operations except under and in accordance with a licence granted under this Act.

(3) Any person who contravenes any provision of subsection (2) shall be guilty of an offence and liable on conviction-

- (a) in the case of an individual, to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both; or
- (b) in the case of a company, to a fine not exceeding P10 000.

5. Constitution of blocks

(1) For the purposes of this Act the surface of the earth shall be deemed to be divided into sections by the-

- (a) meridian of Greenwich and meridians which are at a distance from that meridian of five minutes or a multiple of five minutes of longitude; and
- (b) equator and parallels of latitude which are at a distance from the equator of five minutes or a multiple of 5 minutes of latitude,

each of which is bounded by portions of two of those-

- (i) meridians which are at a distance from each other of five minutes of longitude; and
- (ii) parallels of latitude which are at a distance from each other of five minutes of latitude.

(2) Where a block constituted as provided in subsection (1) would include land in

Botswana and land outside Botswana, the block shall be treated as being constituted by land in Botswana.

PART II

Administration (ss 6-10)

6. Prohibition of disclosure of information

(1) No person shall disclose any information obtained by him or in connection with the administration of this Act except where the disclosure is made-

- (a) for or in connection with the administration of this Act;
- (b) to a person, being a consultant to or officer employed by the Government, who is approved by the Minister to receive such information;
- (c) for the purpose of any legal proceedings;
- (d) for the purpose of preparing official statistics or publications; or
- (e) for any purpose which may be prescribed.

(2) Where an area has been but is no longer subject to a licence, nothing in subsection (1) shall, except where the Minister otherwise directs, operate to prevent the disclosure by or on behalf of the Government of any geological information or matter concerning that area.

(3) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

(4) Where proceedings are instituted for an offence under this section, it shall be a sufficient defence where the accused person proves that the information disclosed was, prior to the disclosure, generally known.

7. Public officer not to acquire or hold certain rights

(1) No public officer shall, directly or indirectly, acquire any right or interest in any licence, and any document or transaction purporting to confer any right or interest on any such officer shall be null and void.

(2) No public officer employed in the Ministry shall acquire or retain any share in a private company carrying on exploration or development operations in Botswana:

Provided that the Minister may authorize a departure from the provisions of this subsection where, in his opinion, the operations in Botswana of the company concerned form a negligible part of the total operations of that company.

(3) Any person who contravenes any provision of subsection (2) shall be guilty of an offence and liable on conviction to a fine not exceeding P500 or to imprisonment for a term not exceeding 12 months, or to both.

8. Indemnity of officers

No public officer or other authorized officer shall be liable for any thing done or omitted to be done *bona fide* in the performance or purported performance of any function vested in or delegated to him by or under this Act.

9. Retention of cores and samples

(1) No core or sample obtained in the course of the exercise of powers conferred by a licence shall be destroyed or otherwise disposed of except for the purposes of identification or analysis without the permission in writing of the Minister, who may grant such permission subject to such conditions as he may deem fit to impose.

(2) Where any core or sample is retained for the purpose of complying with subsection (1), there shall be maintained a record in such degree of particularity as the Minister may require sufficient for the identification of the core or sample and the location and geological horizon of its origin.

(3) Any person who destroys or disposes of a core or sample in contravention of subsection (1) or fails to maintain a record as required by subsection (2) shall be guilty of an offence.

10. Preference for Botswana products, etc.

(1) The holder of every licence shall, in the conduct of his operations under such licence, and in the purchase, construction and installation of facilities, give preference to the maximum extent possible consistent with safety, efficiency and economy, to-

- (a) materials and products made in Botswana; and
- (b) service agencies located in Botswana and owned by Botswana citizens or bodies corporate established under the Companies Act.

(2) The holder of a licence shall, in all phases of his operations, give preference in employment to citizens of Botswana to the maximum extent possible consistent with safety, efficiency and economy.

(3) The holder of a licence shall, in his operations, conduct training programmes in consultation with the Minister for the benefit of employees so that such employees may qualify for advancement.

PART III ***Licences (ss 11-68)*** ***General (ss 11-16)***

11. Restrictions on persons to whom licence may be granted

No licence shall be granted to or held by-

- (a) an individual who-
 - (i) is under the age of 21 years;
 - (ii) is not a citizen of Botswana or has not been ordinarily resident in Botswana for a period of four years or such other period as may be prescribed;
 - (iii) is or becomes an undischarged bankrupt, having been adjudged or otherwise declared bankrupt, whether under the laws of Botswana or elsewhere; or
 - (iv) has been convicted, within the previous 10 years, of any offence of which dishonesty is an element, or of any offence under this Act, the Employment Act or any similar written law in force outside Botswana, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding P300 or the equivalent thereof;
- (b) a company-
 - (i) which has not established a *domicilium citandi et executandi* in Botswana;
 - (ii) unless, in the case of a development licence, such company is incorporated under the Companies Act; or
 - (iii) which is in liquidation except where such liquidation is part of a scheme for the reconstruction or amalgamation of such company.

12. Agreement with respect to grant, etc. of licences

The Minister may enter into an agreement with any person in respect of any or all of the following matters-

- (a) the grant of a licence;
- (b) the conditions to be included in a licence; or
- (c) any matter incidental to or connected with the grant of a licence.

13. Applications to be made to Minister

An application under this Act-

- (a) shall be made to the Minister in such form as may be approved by the Minister or prescribed; and
- (b) may be withdrawn by the applicant giving to the Minister in writing a notice of withdrawal.

14. Powers of Minister to obtain information

(1) The Minister may, by notice in writing served on an applicant for the grant of a licence, require the applicant to furnish in writing, within such reasonable time as is specified in the notice-

- (a) such further information in connection with the application as the Minister may

- reasonably require; or
- (b) where the applicant is a company, such information as the Minister may reasonably require to enable him to ascertain to what extent the controlling power (whether directly or indirectly) relating to the affairs of the company may be vested in a company incorporated outside Botswana or in an individual resident outside Botswana.

(2) To enable him to dispose of an application for the grant of a licence the Minister may cause such investigations, negotiations or consultations to be made or carried out as he considers necessary.

15. Form of licence

A licence shall be in such form as may be approved by the Minister or prescribed.

16. Reservation of blocks

(1) The Minister may, by order published in the *Gazette*, declare that a block specified in the order (not being a block in respect of which a licence is in force) shall not be the subject of a licence.

(2) While a declaration in respect of a block under subsection (1) remains in force, a licence shall not be granted in respect of that block.

(3) The Minister may, by order published in the *Gazette*, vary or revoke any declaration published under this section.

Exploration Licences (ss 17-27)

17. Application for exploration licence

(1) A person may make an application for the grant of an exploration licence in respect of any block.

(2) The Minister, may by notice published in the *Gazette*, invite applications for the grant of an exploration licence in respect of any block, specifying therein the period during which applications may be made.

(3) An application for a licence under this section shall be made in writing and shall contain the following particulars-

- (a) the full name and nationality of the applicant, or, in the case of a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of a body corporate, the registered name of such body, the full names and nationalities of the directors and the full name and nationality of any shareholder who is the beneficial owner of more than five per cent of the issued capital;
- (b) full information as to the applicant's financial status, technical competence and experience;
- (c) a description of the area constituted by the blocks in respect of which the application is being made;
- (d) proposals with respect to the employment and training of Botswana citizens;
- (e) a proposed programme of exploration operations and the estimated cost thereof; and
- (f) any other matter which the applicant may wish the Minister to consider.

(4) An area described in an application under this section shall be constituted by blocks which-

- (a) form a single area; and
- (b) are such that each block in that area has a side in common with at least one other block in that area.

18. Disposal of application for exploration licence

(1) Subject to the provisions of this Act, on application duly made the Minister may grant, on such conditions as he may determine, or refuse to grant an exploration licence in respect of any block.

(2) An exploration licence shall not be granted in respect of a block which is, at the time the application for a licence is made-

- (a) comprised in a licence already granted; or

- (b) reserved by declaration under section 16.

19. Notification of grant or rejection

(1) The Minister shall cause the applicant to be notified in writing of his decision on the application and, where the grant of an exploration licence is approved, such notification shall include the terms and conditions on which it is granted.

(2) Where the applicant-

- (a) notifies the Minister, in writing, within 60 days of the date of notification or within such further period as the Minister may allow, that he accepts the terms and conditions to be attached to the exploration licence, the Minister shall cause the exploration licence to be issued; or
- (b) fails to notify the Minister in accordance with the provisions of paragraph (a), the application shall lapse.

20. Form and content of exploration licence

(1) An exploration licence shall be in such form as the Minister may determine and shall-

- (a) include the terms and conditions on which it is granted;
- (b) include a description and place of the exploration area; and
- (c) state the period for which it is granted.

(2) There shall be appended to an exploration licence a programme of exploration operations.

(3) There may be included in an exploration licence a condition requiring the applicant to agree to the Government or a person nominated on its behalf, on such terms as may be agreed, acquiring or having an interest in any venture to explore for or recover petroleum which may be carried out in any block in the licensed area.

21. Rights conferred by exploration licence

(1) Subject to the provisions of this Act and to the conditions specified in the licence, an exploration licence shall confer on the holder thereof exclusive rights to explore for petroleum in the exploration area and to carry on such operations and execute such work as shall be necessary for that purpose.

(2) Where, in the course of exercising his rights under an exploration licence, the holder of the licence discovers any other mineral, he shall, within 30 days immediately following such discovery, notify the Minister thereof in writing.

22. Term of exploration licence

(1) Subject to the provisions of this Act and to the conditions specified in the licence, an exploration licence shall remain in force-

- (a) for a period not exceeding four years;
- (b) where the licence is renewed under section 25, for such period as may be specified in an application for renewal not exceeding four years in respect of a first renewal, and not exceeding three years in respect of a second or third renewal;
- (c) where the licence is renewed under section 26, for the further period to be specified by the Minister upon the grant of the renewal.

(2) Notwithstanding the provisions of subsection (1), the Minister may renew an exploration licence for a period in excess of any period specified in that subsection where, in his opinion, special circumstances exist justifying such further period.

23. Application for renewal of exploration licence

(1) Subject to the provisions of this section and to section 24, a registered holder of an exploration licence may apply for a renewal of the licence in respect of any block in the exploration area.

(2) An application under this section-

- (a) may be made three times only in respect of an exploration licence;
- (b) shall be made not later than 90 days immediately prior to the day on which the licence is due to expire and shall be accompanied by-

- (i) particulars of the work carried out and the amount expended in respect of the exploration area during the term of the licence, or, where the application is for a second or third renewal of the licence, during the period of the previous renewal, up to and including the date of the application; and
 - (ii) adequate proposals concerning the work to be carried out and the minimum amount to be expended during the period of the renewal for which application is made; and
 - (c) may set out any other matter which the applicant may wish the Minister to consider.
- (3) Notwithstanding the provisions of subsection (2) an application may, with the permission of the Minister, be made more than three times in respect of an exploration licence and the Minister may renew such a licence for such period as he considers necessary if in his opinion special circumstances exist justifying such further renewal.
- 24. Application for renewal to be in respect of reduced area**
- (1) Subject to any agreement under section 12, the number of blocks in respect of which an application for a renewal of an exploration licence may be made shall not exceed the number which is the total of-
- (a) the number of blocks (if any) which, at the date on which the licence would expire if not renewed, constitute a location; and
 - (b) one-half of the area in respect of which the licence was issued or last renewed, as the case may be.
- (2) Subject to any agreement under section 12, the blocks specified in an application for a renewal of an exploration licence shall be blocks which-
- (a) constitute a single area or not more than three discrete areas; and
 - (b) are such that each block in each area has a side in common with at least one other block in that area.
- 25. Grant or refusal of renewal of exploration licence**
- (1) Subject to subsection (2), on application duly made under section 23, the Minister shall grant a renewal of the licence.
- (2) The Minister shall refuse to grant a renewal of an exploration licence where the registered holder thereof is in default (except where, notwithstanding the default, the Minister considers that special circumstances exist which justify the granting of the renewal) or where the proposals accompanying the application pursuant to section 23(2)(b)(ii) in respect of work and expenditure during the renewal period are not adequate.
- (3) The Minister shall not refuse to grant a renewal of an exploration licence on application being duly made under section 23-
- (a) before giving to the applicant notice in writing of his intention to do so, such notice to state particulars of the grounds for the intended refusal and the date before which the applicant may take remedial action or make representations in relation to such grounds; and
 - (b) where the applicant has, before the date specified in a notice under paragraph (a), remedied the default or, in notice in writing to the Minister, made representations which, in the opinion of the Minister, remove the grounds for the intended refusal.
- (4) The Minister shall give to an applicant for a renewal of an exploration licence notice in writing of his decision thereon and, where he is prepared to grant the renewal, he shall give particulars of any variation of the conditions of the licence which may be required in order for the renewal to be granted.
- (5) Where, within 60 days immediately following a notice under subsection (4) that the Minister is prepared to grant a renewal of an exploration licence, the applicant fails to give notice in writing to the Minister of his acceptance thereof, his application shall lapse.
- (6) Where an application for a renewal of an exploration licence has been duly made and the licence expires before the-

- (a) Minister grants or refuses to grant a renewal thereof; or
- (b) application lapses under subsection (5),

the licence shall be deemed to continue in force until the Minister grants or refuses to grant a renewal of the licence or the application lapses, whichever first occurs, except where the licence is cancelled under this Act or the application for a renewal is withdrawn.

26. Renewal of exploration licence in respect of locations

(1) Where-

- (a) petroleum is discovered in an exploration area within a period of two years immediately prior to the date of expiration of an exploration licence which has been renewed three times under section 25; and
- (b) the Minister has made a declaration of a location under section 31, or the registered holder of the licence has nominated a block under section 30 for the purpose of a declaration of a location,

the Minister may grant a further renewal of the licence in respect of the block to which paragraph (b) applies.

(2) A further renewal granted under subsection (1) shall be for a period not exceeding three years and be subject to any condition which the Minister thinks necessary and specifies in the licence.

(3) Where, prior to the expiration of an exploration licence which includes blocks which constitute a location, the registered holder of the licence makes application for a renewal or a further renewal of the licence in respect of some or all of those blocks and satisfies the Minister that-

- (a) the blocks contain all or part of a petroleum reservoir; and
- (b) the construction, establishment and operation of facilities for the recovery of petroleum is economically feasible,

the Minister may grant a renewal or a further renewal of the exploration licence in respect of those blocks.

(4) A renewal of a licence under subsection (3) shall be for a period not exceeding one year.

(5) Notwithstanding the preceding provisions of this section, the Minister may renew an exploration licence for a period in excess of any period specified in the preceding provisions of this section, if in his opinion, special circumstances exist justifying such further period.

27. Conditions of grant of exploration licence

(1) In addition to any condition specified in an exploration licence under section 20, or a renewal of that licence under section 26, the licence shall be subject to the following conditions, namely-

- (a) that not later than one month immediately prior to the anniversary in any year of the grant of the licence, the registered holder of the licence shall submit in writing to the Minister details of an adequate programme in respect of work to be carried out and the amount to be expended following in the year; and
- (b) that in relation to the exploration area, the registered holder of the licence shall, subject to subsection (3), meet the conditions of the licence in respect of work and expenditure.

(2) Any moneys required to be spent under the provisions of subsection (1) which are not so spent shall be a debt due to Government recoverable in a court of competent jurisdiction.

(3) The Minister may (either conditionally or unconditionally), on application in writing made to him by the registered holder of an exploration licence, limit, reduce, vary or suspend any obligation arising pursuant to subsection (1)(b).

Discovery of Petroleum in Exploration Area (ss 28-33)

28. Discovery of petroleum to be notified

(1) Where petroleum is discovered in an exploration area, the registered holder of the

licence-

- (a) shall forthwith inform the Minister of the discovery;
- (b) shall, within a period of 30 days after the date of the discovery, furnish to the Minister particulars in writing of the discovery; and
- (c) shall take all necessary steps within such time as may be reasonably required for the purpose of determining the chemical composition and physical properties of that petroleum and the quantity of petroleum in the petroleum reservoir to which the discovery relates, or if part only of that petroleum reservoir is within the exploration area in that part of the reservoir which is within the exploration area.

(2) Any person who contravenes any provision of this section shall be guilty of an offence and liable on conviction to a fine not exceeding P1000.

29. Directions of Minister on discovery of petroleum

(1) On receipt of the information required under section 28, the Minister may, by notice in writing served on the registered holder of the licence, direct the holder to furnish to him in writing, within such reasonable period as may be specified in the notice, particulars of any of the following-

- (a) the chemical composition and physical properties of the petroleum;
- (b) the nature of the subsoil in which the petroleum occurs;
- (c) the quantity of petroleum in the petroleum reservoir which the discovery relates, or if part only of that petroleum reservoir is within the exploration area, in that part of reservoir which is within the exploration area; and
- (d) any other matters relating to the discovery that are specified in the notice.

(2) Any person who fails to comply with any provision of this section or any direction given under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding P1000.

30. Nomination of block for purpose of declaring location

(1) Where petroleum has been discovered in a block (in this section and section 31 referred to as a "discovery block") within an exploration area (not a block which is or is included in a location), the registered holder of the licence-

- (a) may; or
- (b) shall, if required to do so by the Minister by notice in writing served on the registered holder,

by notice in writing served on the Minister, nominate such discovery block in respect of which an exploration licence is in force for the purpose of making a declaration under section 31.

(2) Where a registered holder of an exploration licence who has been required, by notice in writing served on him under subsection (1), to nominate a discovery block does not, within such reasonable period of time as may be specified in the notice, nominate the block, the Minister may, by notice in writing served on the registered holder of the exploration licence, nominate the block.

31. Declaration of location

(1) Where a registered holder of an exploration licence or the Minister has nominated a discovery block under section 30, the Minister shall, by order published in the *Gazette* declare-

- (a) that discovery block; and
- (b) such of the adjoining blocks that immediately adjoin that block (not exceeding eight in number),

to be a location for the purposes of this Act.

(2) At the request of a registered holder of an exploration licence the Minister may, by order published in the *Gazette*-

- (a) include in a location additional adjoining blocks; or
- (b) revoke the declaration of a location in respect of one or more than one block:

Provided that a location shall not at any time include more than nine blocks.

(3) For the purposes of this section a block adjoins a discovery block where such block has a side in common with or touches-

- (a) a discovery block;
- (b) a block which has a side in common with or touches a discovery block.

32. Investigations of locations

(1) Where a location has been declared under section 31 the Minister may, by notice in writing served on the registered holder of an exploration licence, direct that the holder carry out, within a period (being not less than two years) specified in the notice, such investigations and studies as are necessary and reasonable to assess the feasibility of the construction, establishment and operation of an industry for the recovery of petroleum from the location.

(2) The investigations and studies referred to in subsection (1) may include-

- (a) technical and economic feasibility studies relating to the recovery, processing and transportation of petroleum from the location;
- (b) studies of proposed sites for facilities which would be required by the industry;
- (c) studies of roads, pipelines or other transportation facilities;
- (d) investigations into-
 - (i) suitable water facilities and reticulation systems for industrial and town purposes;
 - (ii) the location and design of a suitable airstrip and associated landing and terminal facilities, if so required, for the industry;
 - (iii) the generation and transmission of electricity required for the industry; and
 - (iv) the development, if required, of a suitable town for the industry, including the design of housing and associated civic, cultural and social facilities;
- (e) investigations of any other works, services or facilities in relation to the location which may be required for the industry;
- (f) studies of future labour requirements for the industry; and
- (g) physical impact studies into the possible effects of the industry on the environment.

(3) A registered holder of an exploration licence shall furnish in writing to the Minister, within the period specified in a notice under subsection (1), such reports, analyses and data resulting from the investigations and studies carried out under this section as the Minister may, by notice in writing served on the holder, require.

33. Removal and disposal of petroleum

A registered holder of an exploration licence shall not, without the written permission of the Minister and subject to such conditions as he may determine, remove any petroleum from an exploration area except for the purposes of having such petroleum analysed, determining its value or conducting tests thereon.

Development Licences (ss 34-45)

34. Application by registered holder of exploration licence for development licence

(1) A registered holder of an exploration licence whose licence is in force in respect of blocks which constitute a location may, within two years immediately following the date on which the blocks were declared to be a location, or such further period as the Minister may allow, make application for the grant of a development licence in respect of such of the blocks which the holder satisfies the Minister contain a petroleum reservoir or part of a petroleum reservoir.

(2) Notwithstanding the provisions of subsection (1), a registered holder of an exploration licence may, during the term of the licence, make application for the grant of a development licence in respect of any block which does not constitute a location within the exploration area if he satisfies the Minister that the block contains a petroleum reservoir or part of a petroleum reservoir.

(3) Any person who is not the registered holder of an exploration licence in respect of a block may make application for the grant of a development licence in respect of a block if-

- (a) he satisfies the Minister that the block contains a petroleum reservoir or part of a petroleum reservoir; and

- (b) the block is not a block in respect of which an exploration licence or a development licence is in force at the time of the application.

35. Application for development licence

An application for a licence under section 34 shall be made in writing and shall contain the following particulars-

- (a) the full name and nationality of the applicant, or, in the case of a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of a body corporate, the registered name of such body, the names and nationalities of the directors and the full name and nationality of any shareholder who is the beneficial owner of more than five per cent of the issued capital;
- (b) full information as to the applicant's financial status, technical competence and experience;
- (c) the number of the applicant's exploration licence;
- (d) the period for which the licence is sought;
- (e) the form of petroleum which it is intended to produce;
- (f) a comprehensive report of the petroleum deposit, which report shall include a description of the petroleum reservoir or deposit, the form of the petroleum and an estimate of the petroleum reserves;
- (g) details, illustrated by an approved plan, of the area in respect of which the application is made;
- (h) a technological report on production and processing possibilities and the intention of the applicant in relation thereto;
- (i) a proposed programme of production and processing operations which shall include-
 - (i) the date by which the applicant intends to work for profit,
 - (ii) the capacity of production and scale of operations,
 - (iii) the estimated overall recovery of petroleum and by-products,
 - (iv) the nature of the petroleum and by-products,
 - (v) the marketing arrangements made for the sale of the petroleum and by-products, and
 - (vi) a detailed programme for the progressive reclamation and rehabilitation of lands disturbed by petroleum extraction and for the minimisation of the effect of such extraction on adjoining land or water area;
- (j) a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing;
- (k) proposals with respect to the employment and training of Botswana citizens;
- (l) a report of the goods and services required for the production and processing operations which can be obtained within Botswana and the applicant's intention in relation thereto;
- (m) details of expected infrastructure requirements; and
- (n) such further information as the Minister may require or as may be prescribed.

36. Disposal of application for development licence

(1) Subject to the provisions of section 37 and to any agreement under section 12, on application duly made under-

- (a) section 34(1) or (2), the Minister shall, on such conditions as he may determine, including in particular a condition requiring the applicant to agree to the Government or a person nominated on its behalf, on such terms as may be agreed, to acquire or have an interest in the production and processing operations in the development area, grant the development licence; or
- (b) section 34(3), the Minister may grant, on such conditions as he may determine, or refuse to grant a development licence in respect of any block.

(2) To enable him to dispose of an application for the grant of a development licence the

Minister may, by notice in writing given to the applicant, require the applicant to furnish, within a period specified in the notice, in addition or by way of alteration to any proposals which have already been furnished, such proposals as the Minister may specify, including proposals relating to any matter referred to in section 32(2).

37. Restrictions on grant of development licence

- (1) A development licence shall not be granted to an applicant unless-
- (a) the proposals of the applicant ensure the most efficient, beneficial and timely use of the petroleum resources concerned;
 - (b) the applicant has adequate financial resources and technical and industrial competence and experience to carry on effective production operations;
 - (c) the applicant is able and willing to comply with the conditions on which a licence may be granted;
 - (d) the applicant's proposals for the employment and training of citizens of Botswana are satisfactory; and
 - (e) the applicant is not in default.
- (2) The Minister shall not refuse an application for the grant of a development licence on any grounds under subsection (1) unless he has-
- (a) given notice in writing to the applicant stating the grounds therefor; and
 - (b) specified in the notice a date prior to which the applicant may make appropriate proposals to remove the grounds for refusal or make representations in relation thereto and the applicant has not, prior to such date, in writing made proposals or representations to the Minister.

38. Notice of decision on application for development licence

- (1) The Minister shall give to an applicant for the grant of a development licence notice in writing of his decision thereon and, where he is prepared to grant the licence, he shall give in the notice details of the conditions relating to the grant of the licence.
- (2) Where, within 60 days immediately following the receipt of a notice under subsection (1) that the Minister is prepared to grant a development licence, an applicant fails to give notice in writing to the Minister of his acceptance thereof, his application shall lapse.

39. Content of development licence

- (1) A development licence shall specify-
- (a) the date of the grant of the licence;
 - (b) the development area;
 - (c) the conditions on which the licence is granted; and
 - (d) particulars necessary for the purpose of giving effect to subsection (2).
- (2) There may be included in a development licence such conditions as may be determined by the Minister in respect of the duty and the extent thereof of the registered holder of a development licence to supply petroleum or petroleum products to meet the requirements of Botswana.

40. Rights conferred by development licence

- (1) Subject to the provisions of this Act and to the conditions specified in the licence, a development licence shall confer on the registered holder thereof exclusive rights-
- (a) to carry on exploration and development operations in the development area;
 - (b) to sell or otherwise dispose of the petroleum recovered; and
 - (c) to carry on such operations and execute such work in the development area as may be considered necessary for the purpose of carrying into effect provisions of this section.
- (2) Where, in the course of exercising his rights under a development licence, the holder of the licence discovers any other mineral, he shall, within 30 days immediately following such discovery, notify the Minister thereof in writing.

41. Duration and renewal of development licence

- (1) Subject to the provisions of this Act, a development licence shall be valid for such

period, not exceeding 25 years, as may be specified therein.

(2) The registered holder of a development licence may apply to the Minister for a renewal of his licence at any time not later than one year immediately prior to the expiry of such licence and subject to the provisions of subsection (4), the Minister shall grant a renewal of such licence.

(3) An application for the renewal of a development licence shall state the period for which the renewal is sought and shall be accompanied by-

- (a) a proposed programme of production and processing operations to be carried on in the period of renewal; and
- (b) details of-
 - (i) the latest proved, estimated and inferred petroleum and by-products reserves;
 - (ii) the capital investment to be made in, and production costs and revenue forecasts in respect of, the period of renewal;
 - (iii) any expected changes in methods of production or processing; and
 - (iv) such further information as the Minister may require,

and shall be presented in such a way as to give a clear indication of any expected increase or reduction in the production activities and the estimated life of the reservoir.

(4) The Minister shall reject an application for renewal where-

- (a) the applicant is in default;
- (b) the Minister is not satisfied that-
 - (i) the production of petroleum in a development area has proceeded with reasonable diligence,
 - (ii) petroleum in workable quantities remains to be produced, or
 - (iii) the proposed programme or production operations will ensure the most efficient and beneficial use of the petroleum resources in the development area.

(5) The Minister shall not reject an application on the ground referred to in-

- (a) subsection (4)(a), unless the applicant has been given details in writing of the default and has failed to remedy the same within such reasonable time as the Minister may allow;
- (b) subsection (4)(b)(i) or (ii), unless the applicant has been given a reasonable opportunity to make written representations thereon to the Minister; or
- (c) subsection (4)(b)(iii), unless the applicant has in writing been so notified and has failed to propose amendments to his proposed programme of production and processing operations satisfactory to the Minister within such time as the Minister may allow.

(6) The period of renewal of a development licence shall be for such period, not exceeding 20 years, as the Minister may consider as reasonably necessary in accordance with good oil field practices to recover from the development area, the maximum amount of petroleum.

(7) The Minister shall give to an applicant for a renewal of a development licence notice in writing of his decision thereon and, where he is prepared to grant the renewal, he shall give particulars of any variation of the conditions of the licence which may be required in order for the renewal to be granted.

(8) Where, within 60 days immediately following a notice under subsection (7) that the Minister is prepared to grant a renewal of a development licence, the applicant fails to give notice in writing to the Minister of his acceptance thereof, his application shall lapse.

(9) Where an application for a renewal of a development licence has been duly made and the licence expires before the-

- (a) Minister grants or refuses to grant a renewal thereof; or
- (b) application lapses under subsection (8),

the licence shall be deemed to continue in force until the Minister grants or refuses to grant a renewal of the licence or the application lapses, whichever first occurs, except where the licence

is cancelled under this Act or the application for a renewal is withdrawn.

42. Revocation of declaration of location

(1) Where, in respect of a block included in a location, the registered holder of an exploration licence does not within-

- (a) a period of two years immediately following the declaration of the location under section 31; or
 - (b) any further period which the Minister may allow under section 34(1),
- apply for a development licence, the Minister may, subject to any agreement under section 12, by order published in the *Gazette*, revoke the declaration of the location.

(2) Where the declaration of a location is revoked under subsection (1)-

- (a) that part of the location which consists of the block which was the discovery block within the meaning of section 30(1); and
 - (b) any adjoining block in which the presence of petroleum has been established at the time of the revocation of the declaration,
- shall cease to be subject to the exploration licence concerned.

(3) Where an application made under section 34(1) for a development licence in respect of a block which is included in a location has lapsed, the exploration licence shall be revoked in respect of that block.

(4) Where an exploration licence is revoked under subsection (3), the Minister shall, by order published in the *Gazette*, revoke the declaration of the location to the extent that it includes that block.

43. Unit development

(1) For the purposes of this Act "**unit development**", in relation to a petroleum reservoir, means the co-ordination of operations being carried on or to be carried on for the recovery of petroleum in a development area in which there is part of the reservoir and operations in another area in which there is part of the same reservoir.

(2) A registered holder of a development licence may from time to time enter into an agreement in writing for or in connection with a unit development of a petroleum reservoir.

(3) For the purpose of securing a more effective recovery of petroleum from a petroleum reservoir, the Minister may on his own motion, or on application made to him in writing by the registered holder of a development licence in whose development area there is a part of that petroleum reservoir, direct in writing that such holder-

- (a) enter into a written agreement with, within the period specified by, the Minister for a unit development in connection with that reservoir; and
- (b) forthwith lodge the agreement with the Minister for approval and registration in accordance with the provisions relating to registration.

(4) Where a registered holder-

- (a) fails to comply with a direction under subsection (3); or
- (b) complies with a direction but the agreement so lodged is not approved under section 51,

the Minister shall, by notice in writing served on the registered holder, direct him to forthwith submit to the Minister, within the period specified in the notice, a scheme for or in connection with a unit development of the petroleum reservoir.

44. Directions as to recovery of petroleum

(1) Where petroleum is not being recovered in a development area and the Minister has reasonable cause to believe that there is recoverable petroleum in that area, he shall, by notice in writing served on the registered holder of the development licence, direct the holder to take all necessary and practicable steps to recover the petroleum.

(2) Where the Minister is satisfied that a registered holder to whom a direction has been given under subsection (1) is not complying therewith, the Minister shall, by notice in writing served on the holder, give to the holder such specific directions as the Minister thinks necessary

to effect compliance with such direction.

(3) Where petroleum is being recovered in a development area, the Minister may by notice in writing served on the registered holder of the development licence, direct the holder to take all necessary and practicable steps to increase (not exceeding the capacity of the existing production facilities) or reduce the rate at which the petroleum is being recovered.

(4) Nothing in this section or in any direction given thereunder shall be construed as requiring the registered holder of a development licence to do anything which is not in accordance with good oil field practices.

45. Trading in development area

(1) No person shall, in any development area, carry on any business for which a licence is required under the Trade Act and the Liquor Act without the consent of the Minister:

Provided that such consent shall not entitle any person to carry on any such business except under and in accordance with the provisions of the Trade Act and the Liquor Act.

(2) No person shall, in any development area, erect any building or other structure for the purpose of carrying on any such business without the consent of the holder of the licence.

Restrictions on Exercise of Rights under Licences (s 46)

46. Restrictions on exercise of rights

(1) A registered holder of a licence shall not exercise any right thereunder-

- (a) without the written consent of the President, upon any land-
 - (i) dedicated as a place of burial;
 - (ii) containing any ancient or natural monument, as defined in the Monuments and Relics Act; or
 - (iii) set aside or used for the purposes of the Government;
- (b) without the written consent of the owner or lawful occupier thereof-
 - (i) upon any land which is the site of or which is within 200 m of any inhabited, occupied or temporarily unoccupied house or building;
 - (ii) within 50 m of any land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of agricultural crops or upon which agricultural crops are growing;
 - (iii) upon any land from which, during the year immediately preceding, agricultural crops have been reaped; or
 - (iv) upon any land which is the site of or is within 100 m of any cattle dip, tank, dam or private water, as defined in the Water Act:

Provided that where consent is unreasonably withheld the Minister may authorize the holder of a licence to exercise all or any of his rights thereunder on such land, subject to such conditions as he may deem fit;

- (c) in a national park, without permission obtained under section 15 of the National Parks Act;
- (d) upon any land reserved for the purposes of a railway track or within 50 m of any railway track, without the written consent of the railway administration concerned;
- (e) upon any land within, or within 200 m of, the boundaries of any city or township, without the written consent of the local authority concerned;
- (f) upon any street, road, highway, public place or aerodrome, without the written consent of the Minister or other authority having control thereof.

(2) A person exercising any right under a licence shall produce evidence of the possession of such licence to the owner or lawful occupier of any land upon which such right is to be exercised upon demand being made to him in that behalf, and, in default of such production, such person may be treated as a trespasser.

(3) No person shall exercise any right under a licence upon any land other than unalienated State land unless he has given at least 14 days' notice of his intention to do so in such manner as the Minister may approve, giving in such notice details of the area in which the

right is to be exercised and the dates of expiry of his licence.

(4) A notice given under subsection (3) shall be valid only for the period of validity of the licence and the person giving such notice shall not exercise any right under such licence in respect of the land to which the notice relates after the expiry thereof and, in the event of a renewal of such licence, he shall give fresh notice under subsection (3).

Surrender, Cancellation or Suspension of Licences (ss 47-48)

47. Surrender of area or part thereof covered by licence

(1) Subject to any condition in his licence, the registered holder of a licence may surrender all or any of the blocks subject to his licence by-

- (a) giving to the Minister not less than three months' notice of his intention to surrender all or any of the blocks concerned;
- (b) applying to the Minister for and obtaining a certificate of surrender; and
- (c) complying with such conditions as the Minister may determine.

(2) Where the application for a certificate of surrender is in respect of only some of the blocks in an area covered by the licence, the registered holder thereof shall-

- (a) in his application, specify the block or blocks to be surrendered and give the results of exploration operations carried out; and
- (b) where the application is approved, demarcate the remaining area in the prescribed manner.

(3) No surrender of any block covered by a licence shall be effective until the Minister has issued a certificate of surrender in respect of that block.

(4) A surrender shall be without prejudice to any liabilities or obligations incurred by the holder in relation to the block surrendered prior to the date of surrender.

(5) On the issue of a certificate of surrender the Minister shall, where the surrender is in respect of-

- (a) all the blocks in an area covered by a licence, cancel such licence; or
- (b) only some of the blocks in an area covered by the licence, amend the licence accordingly.

48. Minister's power to suspend or cancel a licence

(1) Subject to the provisions of this section, the Minister may suspend or cancel a licence where the registered holder thereof-

- (a) is in default;
- (b) dies or becomes insolvent or commits any act of bankruptcy or enters into any agreement or scheme of composition with his creditors or takes advantage of any written law for the benefit of debtors or, in the case of a company, goes into liquidation, except as part of a scheme for the reconstruction or amalgamation of the registered holder;
- (c) makes any statement to the Government in connection with his licence which he knows or ought to have known was false in a material particular; or
- (d) for any reason becomes ineligible to apply for a licence under the provisions of section 11.

(2) Before suspending or cancelling a licence under subsection (1)(a), the Minister shall give the registered holder thereof notice in writing specifying the provisions of this Act or the condition of any licence or agreement in respect of which he is in default and calling upon the registered holder to remedy the default within such period, being not less than 30 days, as may be specified in such notice.

(3) Where the registered holder of a licence fails to remedy any default specified in subsection (1)(a) within the period specified in a notice issued under subsection (2), or where there is an event specified in subsection (1)(b), (c) and (d), the Minister may, by notice to the registered holder, cancel the licence forthwith.

(4) On cancellation of a licence under the provisions of this section, the rights of the

registered holder thereof shall cease but without prejudice to any liabilities or obligations incurred in relation thereto prior to the date of cancellation.

Transfers and Registration (ss 49-53)

49. Records

The Minister shall cause to be kept a record, in such form as may be determined by the Minister, in which shall be recorded-

- (a) the name and address of the person to whom a licence is granted; and
- (b) any dealings with or affecting the licensee in connection with the licence.

50. Interest in licence to be created by instrument in writing

A legal or equitable interest in or affecting a licence shall not-

- (a) be capable of being created, transferred, assigned or dealt with, whether directly or indirectly, except by instrument in writing; or
- (b) affect the liability of the registered holder of the licence for a breach of any condition of the licence or of any provision of this Act.

51. Transfer, etc., of licence to be approved by Minister

(1) Except where the Minister otherwise approves-

- (a) the transfer of a licence; or
- (b) an instrument by which a legal or equitable interest in or affecting a licence is created, assigned or dealt with, whether directly or indirectly,

the transfer or the instrument shall be of no effect.

(2) An application for approval by the Minister under subsection (1) shall be made to the Minister in such form as may be prescribed or determined by the Minister.

(3) Subject to subsections (4) and (5), on application made under subsection (2) the Minister may give or refuse to give his approval, or give his approval subject to such conditions as he deems necessary in the circumstances to impose.

(4) The Minister shall give his approval to the transfer of an exploration licence where the transferee-

- (a) is a person controlling, controlled by or under common control with the transferor; and
- (b) is not a person disqualified under any provision of this Act from holding an exploration licence.

(5) Where the Minister gives his approval under subsection (4), he shall cause the name of the transferee to be recorded as the registered holder of the licence, and any legal proceedings which may be or have been commenced against that holder may be commenced or continued notwithstanding the transfer.

(6) For the purposes of subsection (1)(a) a reference to the "transfer of a licence" shall include a transfer of a licence by operation of law.

52. Minister may require additional information

The Minister may require any person making application under section 51 to furnish him in writing with such additional information as he may reasonably require to enable him to dispose of the application.

53. Evidence

The Minister may issue a certificate in respect of any of the following matters, namely, that-

- (a) a licence was granted, transferred, suspended or cancelled on or with effect from the date specified in the certificate;
- (b) a block, identified in the certificate, is or was on the date specified therein subject to a licence;
- (c) a certificate of surrender in respect of a particular block was issued on the date specified in the certificate;
- (d) the person named in the certificate is or was on the date specified in the certificate the registered holder of a licence;

- (e) a direction, specified in the certificate, was, on the date specified therein, given to the person named in the certificate; or
- (f) a condition specified in the certificate-
 - (i) is or was on the date specified therein a condition of the licence; or
 - (ii) is a condition on which the certificate of surrender or on which the consent or approval, as specified, was issued or given,

and, without prejudice to the right to adduce evidence in rebuttal, such a certificate shall be admissible as evidence of that fact in any proceedings before a court of competent jurisdiction.

Miscellaneous (ss 54-68)

54. Application of Schedule

(1) The provisions set out in the Schedule shall apply in respect of the duty of a registered holder or former registered holder of a licence to furnish information in such form as may be determined by the Minister or prescribed, submit reports or keep records and accounts.

(2) The registered holder of a licence shall, immediately following the grant of a licence, establish an address in Botswana and give to the Minister in writing notice thereof and of any change thereof.

55. Work practices for registered holder of licence

(1) A registered holder of a licence shall-

- (a) carry out in the exploration or development area exploration or development operations in a proper, safe and workmanlike manner and in accordance with good oil field practices;
- (b) take all reasonable steps necessary to secure the safety, health and welfare of persons engaged in operations in or about the exploration or development area; and
- (c) comply with regulations and any direction given pursuant to section 61 and with any direction given, restriction imposed or requirement requested by an authorized officer in the performance of his duties under this Act.

(2) In particular, and without limiting the generality of subsection (1), a registered holder of a licence shall-

- (a) control the flow and prevent the waste or escape in the exploration or development area of petroleum gas (not being petroleum or water);
- (b) prevent the escape in the exploration or development area of any mixture of water or drilling fluid and petroleum or any other substance;
- (c) prevent damage to petroleum bearing strata in an area in respect of which the licence is not in force;
- (d) keep separate in the manner prescribed-
 - (i) each petroleum reservoir discovered in the exploration or development area; and
 - (ii) such of the sources of water (if any) discovered in the exploration or development area, as the Minister, by notice in writing served on the holder, directs;
- (e) except where required by and in accordance with good oil field practices, prevent water or any other substance entering a petroleum reservoir through any well in the exploration or development area;
- (f) prevent the pollution of any water-well, spring, stream, river, lake, reservoir or estuary by the escape of petroleum, salt water, drilling fluid, chemical additive, gas (not being petroleum) or any other waste product or effluent;
- (g) where a pollution occurs, treat or dispose of it in an environmentally acceptable manner; and
- (h) prior to the drilling of a well, furnish the Minister with a detailed report on the technique to be employed, an estimate of the time to be taken, the material to be used and the safety measures to be employed in the drilling of the well.

(3) Where the consent in writing of the Minister has been obtained, nothing in this section shall prevent a registered holder of a licence from flaring natural gas in accordance with

the terms of the notice of consent.

(4) Nothing in this section shall prevent a registered holder of a licence from flaring natural gas where, in an emergency, flaring is necessary to safeguard the health and safety of persons in the exploration or development area or to prevent damage to the property of any person in such area.

(5) A registered holder of a licence shall give the Minister notice in writing, in such form as may be prescribed or determined by the Minister, of his intention to abandon a well, and the closure or plugging of a well shall be carried out only with the prior written consent of the Minister and in the manner prescribed or determined by the Minister.

56. Work practices for holder of notice of consent

Any person who is the holder of a notice of consent under section 67 shall carry out exploration operations in a proper and workmanlike manner and in accordance with good oil field practices, and shall take all reasonable steps to secure the safety, health and welfare of persons engaged in those operations in or about the area.

57. Wasteful production and processing practices

(1) Where the Minister considers that the registered holder of a development licence is using wasteful production or processing practices, he may notify such holder accordingly and require him to show cause, within such time as the Minister shall specify, why he should not cease to use such practices.

(2) Where, within the time specified in any notice issued under subsection (1), the registered holder of a licence fails to satisfy the Minister that he is not using wasteful production or processing practices, or that the use of such practices is justified, the Minister may order the holder to cease using such practices within such time as he may specify.

(3) Where the registered holder of a licence fails, after being ordered to do so, to cease using wasteful production or processing practices, the Minister may cancel the licence or may suspend such licence for such period as he deems fit.

58. Penalty for breach of section 55 or 56

(1) A registered holder of a licence or holder of a notice of consent under section 67 who fails to comply with a requirement under section 55 or 56 shall be guilty of an offence and liable on conviction to a fine not exceeding P10 000.

(2) Where proceedings are instituted for an offence under this section, it shall be a sufficient defence where the accused person proves that he forthwith took all reasonable steps to comply with the requirement of the section applicable to him.

59. Maintenance, etc., of property

(1) A registered holder of a licence or a holder of a notice of consent under section 67 shall-

- (a) maintain in good condition and repair all structures, equipment and other property used in connection with the operations in which he is engaged in the area subject to the licence or in respect of which the notice of consent is in force;
- (b) remove from the area concerned all structures, equipment and other property which are not used or to be used in connection with the operations in which he is engaged; and
- (c) take reasonable steps to warn persons who may, from time to time, be in the vicinity of any such structure, equipment or other property of the presence thereof and the possible hazards which may result therefrom.

(2) The provisions of subsection (1) shall not apply to a structure, equipment or other property which was, without the authority of the registered holder of the licence or the holder of the notice, as the case may be, brought into the area subject to a licence or in respect of which a notice of consent is in force.

(3) A registered holder of a licence or holder of a notice of consent who contravenes any provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not

exceeding P10 000.

60. Drilling near boundaries

(1) Except with the consent in writing of the Minister and in accordance with such conditions, if any, as may be specified in the notice of consent, a registered holder of a licence shall not drill a well any part of which is less than 1000 m from a boundary of the area subject to the licence.

(2) Where a registered holder of a licence does not comply with subsection (1), the Minister may, by notice in writing served on the holder, direct that, within the period specified in the notice, he take one or more of the following actions-

- (a) plug the well;
- (b) close off the well;
- (c) comply with any direction specified in the notice relating to the drilling or maintenance of the well.

(3) Any person who fails to comply with a direction under subsection (2) shall be guilty of an offence and liable on conviction to a fine not exceeding P10 000.

61. Directions

(1) The Minister may, by notice in writing served on the registered holder of a licence, give to the holder directions as to any matter which may be prescribed.

(2) Any person who fails to comply with a direction given under subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding P10 000.

(3) Where proceedings are instituted for an offence under this section, it shall be a sufficient defence where the accused person proves that he forthwith took all reasonable steps to comply with the direction.

62. Compliance with directions

(1) Where a person fails to comply with a direction given to him under section 61, the Minister may cause to be done all or any of the things required by that direction.

(2) Any costs or expenses incurred by the Minister under subsection (1) shall be a debt due to the Government by the person to whom the direction was given and may be recovered in a court of competent jurisdiction.

63. Removal of property, etc., by registered holder

(1) Where a licence has been wholly or partly determined or cancelled or has expired, the Minister may, by notice in writing served on the person who is or was the registered holder of the licence direct that person to-

- (a) remove or cause to be removed from the relinquished area concerned all property brought into that area by any person engaged or concerned in the operations authorized by the licence or to make arrangements which are satisfactory to the Minister in respect of that property;
- (b) plug or close off, to the satisfaction of the Minister, all wells made in that area by the person engaged or concerned in the operations; and
- (c) make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area.

(2) Any dam and the water impounded thereby shall be left intact and any machinery or equipment connected therewith may be removed only with the written consent of the Minister.

(3) Nothing in this section or in any direction given thereunder shall be construed as requiring any person who is or was the registered holder of a licence to do anything which is not, or to refrain from doing anything which is, in accordance with good oil field practices.

(4) Any person to whom a direction is given under subsection (1) who fails to comply with the direction within the period specified in the notice shall be guilty of an offence and liable on conviction to a fine not exceeding P200.

64. Removal and sale of property, etc., by Minister

(1) Subject to the provisions of section 63(3), where a direction given under section 63

has not been complied with the Minister may-

- (a) do or cause to be done all or any of the things required by the direction;
- (b) remove or cause to be removed, in such manner as he thinks fit, from the relinquished area concerned all or any of the property;
- (c) dispose of, in such manner as he thinks fit, all or any of the property referred to in paragraph (b); and
- (d) where he has served on a person whom he believes to be the owner of the property or part thereof a copy of the notice by which the direction was given, sell or cause to be sold by public auction or otherwise as he think fit all or any of the property referred to in paragraph (b) which belongs or which he believes to belong to that person.

(2) The Minister may deduct from the proceeds of a sale of property under subsection (1) all or any part of any-

- (a) costs or expenses incurred by him in relation to-
 - (i) the property; or
 - (ii) the doing of anything required by a direction under section 63 to be done; and
- (b) fees or amounts due and payable under this Act by the person concerned.

(3) Any costs or expenses incurred by the Minister under subsection (1), if incurred in relation to the-

- (a) removal, disposal or sale of property, shall be a debt due to the Government by the owner of the property; or
- (b) doing of anything required by a direction under section 63, shall be a debt due to the Government by that person,

and to the extent to which they are not recovered under subsection (2) shall be recoverable by the Government as a debt.

(4) Subject to subsection (3), no action shall lie in respect of the removal, disposal or sale of property under this section.

65. Penalty for default in payment

(1) Where the liability of a person under this Act to pay an amount is not discharged on or before the due date, there shall be payable by that person an additional amount calculated at the rate of two per cent for each month or part of a month upon so much of that amount as from time to time remains unpaid, to be computed from the time that the amount became payable until it is paid.

(2) The Minister may, in a particular case, for reasons which in his opinion are sufficient, remit the whole or part of an amount under this section.

66. Survey of wells, etc.

(1) The Minister may at any time, by notice in writing served on a registered holder of a licence, direct the holder to-

- (a) demarcate and keep demarcated, in such a manner as may be prescribed, the development area, and submit to the Minister, within such time as may be prescribed, a diagram of the development area;
- (b) carry out a survey of the position of any well or of any structure or equipment; or
- (c) furnish to him in writing, within a period specified in the notice, a report of the survey.

(2) Where the Minister is not satisfied with a report furnished to him under subsection (1), he may, by notice in writing served on the registered holder of a licence, direct the holder to forthwith furnish in writing such further information as he may require.

(3) Where a person to whom a direction is given under subsection (1) fails to comply therewith, the Minister may cause to be carried out the survey specified in the notice containing the direction.

(4) Notwithstanding that a registered holder may be convicted of an offence under subsection (5), any costs or expenses incurred pursuant to subsection (3) shall be a debt due to the Government and recoverable in a court of competent jurisdiction.

(5) Any person to whom a direction is given under subsection (1) or (2) who fails or neglects to comply therewith shall be guilty of an offence and liable on conviction to a fine not exceeding P5000.

67. Scientific investigations

(1) The Minister may, by notice in writing, consent, subject to such conditions (if any) as the Minister may determine, to the carrying on by any person of exploration operations for the purpose of scientific investigations.

(2) A notice of consent issued pursuant to subsection (1) shall authorize the person to whom it is issued to carry on, in the area specified in the notice, exploration operations for the purpose referred to in subsection (1).

68. Restriction on transfer of shares

Without the prior written approval of the Minister, no person shall dispose of and no person shall acquire, directly or indirectly, any interest in any company of a registered holder of a licence which would confer a voting right or other financial interest exceeding 20 per cent of the total or a right to appoint directors, and, in considering any application for such approval, the Minister may call for such information as he considers necessary.

PART IV

Surface Rights (ss 69-72)

69. Right to graze stock, etc.

(1) The owner or lawful occupier of any land in an exploration or development area shall retain the right to graze stock upon or to cultivate the surface of such land insofar as such grazing or cultivation does not interfere with the exploration or development operations in the area.

(2) In the case of a development area, the owner or lawful occupier of any land within such area shall not erect any building or structure thereon without the consent of the registered holder of the licence, or, if such consent is unreasonably withheld, the written consent of the Minister.

(3) The rights conferred by a licence shall be exercised reasonably so as to affect as little as possible the interests of any owner or lawful occupier of the land to which such rights are exercised and exploration or development operations shall be carried out in a proper manner.

70. Acquisition of exclusive rights by registered holder of development licence

(1) A registered holder of a development licence may, if he requires the exclusive use of the whole or any part of a block in a development area, and shall if so requested by the owner or lawful occupier of any part of such area, obtain a lease thereof or other right to use the same upon such terms as to the rent to be paid therefor, the duration thereof or the extent or area of the land to which such lease or other right shall relate as may be agreed between the holder and the owner or lawful occupier, or failing such agreement, as may be determined by arbitration:

Provided that-

- (i) a registered holder of a development licence shall not obtain a lease of or other right over any land specified in section 46(1)(a) and (c) to (f) inclusive except with the written consent of the persons specified therein;
- (ii) in the case of tribal land, any rents payable under this subsection shall be payable to the land board of the area in which the land is situate; and
- (iii) an arbitrator appointed in pursuance of this subsection may, on application by any interested party, apportion any rent payable under this subsection between the owner and any lawful occupier.

(2) In assessing any rent payable under the provisions of this section an arbitrator shall determine the matter in relation to values at the time of the arbitration current in the area to which the development licence relates for land of a similar nature to the land concerned but

without taking into account any enhanced value due to the presence of petroleum.

71. Compensation for disturbance of rights, etc.

(1) A registered holder of a licence shall, on demand being made by the owner or lawful occupier of any land subject to such rights, pay such owner or occupier fair and reasonable compensation for any disturbance of the rights of such owner or occupier and for any damage done to the surface of the land due to exploration or development operations, and shall, on demand being made by the owner of any crops, trees, buildings or works damaged during the course of such operations, pay compensation for such damages:

Provided that-

- (i) payment of rent under the provisions of section 70 shall be deemed to be adequate compensation for deprivation of the use of land to which such rent relates;
- (ii) in assessing compensation payable under this section, account shall be taken of any improvement effected by the registered holder of the licence or by his predecessor-in-title, the benefit of which has or will enure to the owner or lawful occupier thereof;
- (iii) the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land (for which purpose it shall be deemed saleable) upon which the damage occurred has been reduced by reason of such damage, but without taking into account any such enhanced value due to the presence of petroleum; and
- (iv) no compensation shall be payable to the holder of a State grant of land or his successors-in-title in respect of any operations under a licence existing at the date of such grant.

(2) Where the registered holder of a licence fails to pay compensation when demanded under the provisions of this section, or if the owner or lawful occupier of any land is dissatisfied with any compensation offered, the dispute shall be determined by arbitration.

(3) A claim for compensation under the provisions of subsection (1) shall be made within a period of four years from the date when such claim has accrued, failing which, notwithstanding the provisions of any other written law, such claim shall not be enforceable.

72. Compulsory acquisition of land

(1) Where the President considers that any land is required to secure the development or utilization of the petroleum resources of Botswana, he may compulsorily acquire such land.

(2) Acquisition of land under this section shall be deemed to be a public purpose in terms of the provisions of the Acquisition of Property Act and any acquisition under this section shall be effected in accordance with the provisions of that Act.

PART V

Financial (ss 73-79)

73. Royalty on petroleum obtained under development licence

(1) Subject to the provisions of this Act, a registered holder of a development licence shall, in accordance with the conditions of his licence, pay royalty in respect of petroleum produced and saved by him in the development area.

(2) Where provision is made in a licence for the payment of royalty in kind, the word "pay" and cognate expressions in this Part shall be construed accordingly.

74. Provisional royalty

(1) Where, for any reason, it is impractical to assess the amount of any royalty due, the Minister may assess a provisional royalty.

(2) When any royalty due has been ascertained, the registered holder of the licence concerned shall pay any sum which may be required to complete such ascertained royalty or be entitled to be repaid any sum paid in excess of the ascertained royalty.

75. Prohibition on disposal of petroleum

(1) Where a registered holder of a development licence fails to pay any royalty or

provisional royalty due in respect of that licence on or before the due date or any extension thereof, or where the Minister has reason to believe that petroleum has been produced from any area and royalties have not been paid in respect thereof, the Minister may, by order served on the holder of the licence, prohibit the disposal of, or any dealings in or with, any petroleum from the development area concerned, or from any other area held by such registered holder under a development licence until all outstanding royalties have been paid or until an arrangement has been made, acceptable to the Minister, for the payment of such royalties.

(2) Any registered holder of a development licence who fails to comply with an order under this section or, contrary thereto, receives any petroleum from the area concerned, shall be guilty of an offence.

76. Remission of royalty, etc.

(1) Where he considers it expedient in the interests of the production of petroleum, the Minister may, for such period as he may determine, remit, in whole or in part, any royalty payable on petroleum obtained from a particular development area.

(2) The Minister may, on application made to him by a registered holder of a development licence, defer, for such period and subject to such conditions as he may determine, payment of any royalty due from the holder.

(3) The Minister may exempt from liability to royalty samples of petroleum required for the purpose of analysis or other examination.

77. Recovery of royalty, etc.

(1) Any royalty, fee, rent or other payment which may become due in respect of any right under the provisions of this Act shall be a debt due to the Government and recoverable in a court of competent jurisdiction.

(2) Without prejudice to the right to adduce evidence in rebuttal, a certificate issued by the Minister certifying that a specified amount of royalty, an annual fee, rent or other payment is payable by a specified person shall, in any proceedings instituted against that person for the recovery of any such royalty, fee, rent or other payment, be received as evidence of that fact.

78. Annual fee in respect of licence

(1) There shall be payable to the Government by the registered holder of a licence an annual fee of such amount as may be determined by the Minister or prescribed.

(2) The annual fee payable pursuant to subsection (1) shall be payable on the grant of a licence and thereafter annually on the anniversary of the grant until the termination of the licence.

(3) Where an exploration licence is granted over land in a tribal area as defined in the Tribal Land Act, one-half of any moneys received under the provisions of this section shall be appropriated as a grant-in-aid to the district council of the area in which the land is situated.

79. Security for compliance

The Minister may from time to time, make such arrangements as appear appropriate to him to secure the compliance of a registered holder with the provisions of this Act and, in particular may accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

PART VI

Miscellaneous (ss 80-87)

80. Minister may require information to be furnished

(1) Where the Minister has reason to believe that a person is capable of giving information or producing or making available any book, document or data relating to exploration or development operations or to petroleum obtained from an exploration or a development area or the value of petroleum so obtained, he may, by notice in writing served on that person, require that person-

- (a) within the period and in the manner specified in the notice, to furnish him with the information required; or

- (b) at such time and place specified in the notice-
 - (i) to attend before him or an authorized officer to answer any question; or
 - (ii) to make available to him or an authorized officer any book, document or data or copies thereof relating thereto as specified.

(2) A person shall not be excused from complying with the provisions of this section on the ground that such compliance may tend to incriminate him or make him liable to penalty, but any information furnished, question answered, document or data produced shall not be admissible in evidence against him in any proceedings, other than proceedings for an offence under section 81, which may be instituted against him.

(3) Where a book, document or data are made available pursuant to a requirement under subsection (1)(b)(ii), the person to whom the book, document or data are made available may make copies thereof or take extracts therefrom.

81. Failure to furnish information, etc., under section 80

Any person who-

- (a) fails to comply with a requirement under section 80(1); or
- (b) in purported compliance with such a requirement, knowingly or recklessly-
 - (i) furnishes information; or
 - (ii) makes a statement or produces or makes available a book, document or data, which is false or misleading in a material particular,

shall be guilty of an offence and liable on conviction to a fine not exceeding P1000 or to a term of imprisonment not exceeding two years, or to both.

82. Power of entry, etc.

(1) For the purposes of this Act the Minister or an authorized officer may, at all reasonable times-

- (a)
 - (i) enter any area, building, structure, vehicle, vessel or aircraft; or
 - (ii) inspect and test, or have tested by a qualified person, any machinery or equipment, which in his opinion has been, is being or is to be used in connection with exploration or development operations;
- (b) take or remove samples of petroleum or water or other substance for the purpose of analysis or testing or for use in evidence in connection with an offence under the provisions of this Act;
- (c) inspect, make copies of or take extracts from any document, book or data relating to exploration or development operations;
- (d) in respect of the health and safety of persons employed by a registered holder of a licence in or in connection with exploration or development operations, by notice in writing issue directions to or impose restrictions on the holder or on any person so employed;
- (e) direct, by notice in writing-
 - (i) the cessation of operations on or in, and the withdrawal of all persons from, any area, building or structure which is being used in connection with exploration or development operations; or
 - (ii) the discontinuance of the use of any machinery or equipment, which he considers unsafe, until such action necessary for safety is taken;
- (f) make such examinations and enquiries necessary to ensure that the provisions of, and any direction issued or order made or restriction imposed under this Act are being complied with; and
- (g) obtain and record statements from any witness, appear at or conduct any enquiry held in respect of any accident which may have occurred in the course of exploration or development operations, and at any inquest call, examine and cross-examine any witness.

(2) Where there is a person present who is or appears to be in charge of the area, building, structure, vehicle, vessel, aircraft, machinery, equipment or matter or thing in respect of which any of the powers under subsection (1) are to be exercised, the Minister or an authorized officer shall, before exercising any such power, identify himself to that person and to any person to whom he is about to give an order or a direction.

(3) In exercising his powers under subsection (1) the Minister or the authorized officer may be accompanied by any person who the Minister or the officer believes has special or expert knowledge of any matter or thing being inspected, tested or examined.

(4) Any person who is an occupier or person in charge of an area, building or structure, or the person in charge of any vehicle, vessel, aircraft, machinery, equipment or matter or thing, referred to in subsection (1), shall provide the Minister or the authorized officer with all reasonable facilities and assistance (including, if necessary, the provision of transport) for the effective exercise of the powers conferred by this section.

83. Offences in relation to section 82

Any person who-

- (a) without reasonable excuse, obstructs, molests or hinders the Minister or an authorized officer in the exercise of his powers under section 82;
- (b) knowingly or recklessly makes a statement or produces a document which is false or misleading in a material particular to the Minister or to an authorized officer; or
- (c) with intent to mislead or deceive the Minister or an authorized officer does any act or withholds any information,

shall be guilty of an offence and liable on conviction to a fine not exceeding P1000 or to a term of imprisonment not exceeding two years, or to both.

84. Obstruction of registered holder of licence

Any person who, without reasonable excuse, obstructs, molests, hinders or prevents a registered holder of a licence in or from doing any act authorized to be done under the provisions of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding P500 or to a term of imprisonment not exceeding 12 months.

85. Offence committed by company

Where an offence which has been committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other officer of the company, or by a person who was purporting to act in any such capacity, he, together with the company, shall be guilty of that offence and shall be liable to prosecution.

86. Miscellaneous offences

Any person who-

- (a) (i) in or in connection with an application under this Act knowingly or recklessly gives; or
- (ii) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included, information which is false or misleading in a material particular; or
- (b) places or deposits, or is an accessory to the placing or depositing of, any petroleum or other substance in any place with the intention of misleading any other person as to the petroleum possibilities of that place,

shall be guilty of an offence and liable on conviction, in the case of-

- (i) an individual, to a term of imprisonment not exceeding three years; or
- (ii) a company, to a fine not exceeding P10 000.

87. General penalty

Any person found guilty of an offence under this Act for which no other penalty is provided shall be liable on conviction thereof to a fine not exceeding P500 or to a term of imprisonment not exceeding 12 months.

PART VII
Regulations (s 88)

88. Regulations

The Minister may, by statutory instrument, make regulations-

- (a) in respect of the instigation and conduct of proceedings under this Act and the keeping of records and notes of evidence concerning such proceedings;
- (b) providing for any matter which under this Act is to be provided for by regulation;
- (c) appointing such persons as he deems fit to be authorized officers for the purpose of performing any function under this Act;
- (d) prescribing any matter or thing referred to in this Act as prescribed or to be prescribed; and
- (e) generally for the purpose of giving effect to the provisions of this Act.

SCHEDULE
RECORDS, REPORTS AND ACCOUNTS

(s. 54)

1. Records, etc.

Subject to the provisions of this Schedule, a registered holder of a licence shall keep at the address referred to in section 54(2), in such form as the Minister may approve or as prescribed, accurate geological maps and plans and geophysical records, including interpretations thereof, relating to the area subject to the licence, together with accurate records containing full particulars of the following matters-

- (a) the drilling, operation, deepening, plugging or abandonment of wells;
- (b) the strata and subsoil through which wells are drilled;
- (c) the casing inserted in wells and any alteration thereto;
- (d) the area in which any geological or geophysical work has been carried out;
- (e) the petroleum, water or other economic mineral or any dangerous substance encountered; and
- (f) such further matters as may be prescribed.

2. Reports

A registered holder of a licence shall give to the Minister-

- (a) at half-yearly intervals commencing six months immediately following the grant of a licence-
 - (i) a summary of geological and geophysical work carried out;
 - (ii) a summary of drilling activities and the results obtained; and
 - (iii) a list of maps, reports and other geological and geophysical data prepared for the holder in respect of the period concerned;
- (b) within 60 days immediately following the end of each year of the term of the licence-
 - (i) a record detailing the results of all exploration and development operations carried out by the holder in the year concerned; and
 - (ii) estimates (if available) of economically recoverable reserves of crude oil and natural gas at the end of the year concerned;
- (c) within six months of the completion of drilling, or, in the case of information which cannot reasonably be obtained in that period, as soon as possible, a summary of exploration wells drilled, including lithological groups, letter classification boundaries and hydrocarbon zones;
- (d) at such intervals as may be prescribed, such further information as may be specified.

3. Duties on termination of licence

Subject to the provisions of this Schedule, where a licence is determined or cancelled or expires, the person who was the registered holder of the licence shall, immediately prior to the determination, cancellation or expiration, forthwith deliver to the Minister-

- (a) all records relating to the licence which the former holder maintained pursuant to this Schedule;
- (b) all plans or maps of the area which was subject to the licence, together with all tapes, diagrams, profiles and charts, which were prepared by or on the instructions of the former holder; and
- (c) such other documents as the Minister may, by notice in writing given to the former holder, require him to deliver.

4. Accounts

Subject to the provisions of this Schedule, a registered holder of a licence shall keep at the address referred to in section 54(2), accurate accounts containing full particulars of the following matters-

- (a) the gross quantity of crude oil and natural gas won and saved from the area subject to the licence;
- (b) the grade and gravity of crude oil and the composition of natural gas produced;
- (c) any quantity of-
 - (i) crude oil;
 - (ii) natural gas;
 - (iii) refined petroleum products, including liquified petroleum gas; or
 - (iv) sulphur, in any form, or other mineral in any form or other gas, liquid or solids,
 disposed of by way of sale or otherwise, the consideration received, the quantity disposed of and the name of the person to whom the disposal was made;
- (d) the quantity of petroleum injected into the formation of-
 - (i) crude oil;
 - (ii) natural gas;
 - (iii) refined petroleum products, including liquified petroleum gas; or
 - (iv) other liquids or gases;
- (e) the quantity of petroleum consumed for drilling and other production operations (other than the quantities reported under paragraph (d)) and in pumping to field storage and refineries in Botswana of-
 - (i) crude oil;
 - (ii) natural gas; or
 - (iii) refined petroleum products, including liquified petroleum gas;
- (f) the quantity of crude oil refined by or on his behalf in Botswana;
- (g) the quantity of natural gas treated in Botswana by him or on his behalf for the removal of liquid or liquified petroleum gas and the quantity of-
 - (i) butane;
 - (ii) propane; or
 - (iii) other liquid or gas or solids obtained from it;
- (h) the quantity of natural gas flared; and
- (i) such other information as may be prescribed.

5. Modification of duties under Schedule

The Minister may, on application made to him in writing by a registered holder or former registered holder of a licence, by notice in writing, dispense with or modify any requirement of this Schedule to the extent and on the conditions (if any) stated in the notice.

CHAPTER 72:01 BOTSWANA POSTAL SERVICES ARRANGEMENT OF SECTIONS

SECTION

PART I

Preliminary

1. Short title and commencement
2. Interpretation

PART II

Establishment of Botswana Postal Services and Board of Management

3. Establishment of Botswana Postal Services
4. Establishment of Board
5. Resignation and removal from office
6. Tenure of office
7. Payment of members

PART III

Meetings and Proceedings of Board

8. Meetings
9. Signification of documents

PART IV

Officers, Employees and Agents of the Post

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

PART V

Functions, Powers and Duties of the Post

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

PART VI

Finances

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

PART VII

General

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

PART VIII

Transmission of Postal Articles

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

PART IX

Remittance of Money through Post Office

- 43. Remittance of money through the Post
- 44. Director General may refuse to issue or pay money orders, etc., to certain persons

45. Money orders, etc., to be deemed bank notes

PART X

Offences and Penalties

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

PART XI

Miscellaneous

62. Limitation of liability
63. Detention of postal articles
64. Regulations
65. Repeal and savings

Act 22, 1989,
S.I. 2, 1990.

An Act to provide for the establishment of an organization to be known as the Botswana Postal Services for the provision, development, operation and management of postal services and for matters connected therewith or incidental thereto.

[Date of Commencement: 6th October, 1989]

PART I

Preliminary (ss 1-2)

1. Short title and commencement

This Act may be cited as the Botswana Postal Services Act.

2. Interpretation

In this Act, unless the context otherwise requires-

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

"franking machine" means a machine for the purpose of making impressions on postal articles to denote payment of postage and includes any meter and any franking or date stamping die used in connection with postal franking;

"money order" means a money order issued under this Act or by any postal authority for payment under this Act;

"postage stamp" or **"stamp"** means any piece of paper or other substance or material having thereon the stamp mark, or impression of any die, plate or other instrument made or used under this Act on by any postal authority for the purpose of denoting any postage or other

postal fee;

"postal article" means any letter, post card, reply post-card, letter-card, newspaper, book, packet, sample packet or pattern or any parcel or other article when in course of transmission by post;

"postal order" means a postal order issued under this Act or by any postal authority for payment under this Act;

"postal service" means a service performed and facilities provided in connection with-

- (a) the collection, transmission and delivery of postal articles by whatever means of transportation from one place to another whether within or outside Botswana;
- (b) the issue of postage stamps and the use of franking machines; and
- (c) the issue or repayment of money orders or postal orders for the remittance of money through the Botswana Postal Services; and

"senior officer" means any employee of the Botswana Postal Services who holds a position which is so designated by the Board.

PART II

Establishment of Botswana Postal Services and Board of Management (ss 3-7)

3. Establishment of Botswana Postal Services

(1) There is hereby established a commercial organization of the Government of Botswana to be known as the Botswana Postal Services, referred to in this Act as the "Post".

(2) Notwithstanding any other law to the contrary, all legal proceedings by or against the Government of Botswana and related to any commercial activity for or by the Post may be instituted by or against the Botswana Postal Services in its own name as representing the Government of Botswana, and the necessary service of process therein may be effected on the Director General of Botswana Postal Services appointed under section 10 of this Act.

(3) Sections 3 and 6 of the Civil Procedure (Actions by or Against Government or Public Officers) Act shall not apply to actions by or against the Botswana Postal Services.

4. Establishment of Board

(1) There is hereby established a Board of Management of the Botswana Postal Services (hereinafter referred to as the Board) which shall have such powers in relation to the overall management and control of the Post as may be specified in this Act.

(2) The Board shall consist of the following members appointed by the Minister-

- (a) the Chairman;
- (b) the Director General of the Botswana Postal Services appointed under section 10 who shall be an *ex-officio* member; and
- (c) not less than 5 nor more than 7 other persons who in the opinion of the Minister have knowledge and experience likely to contribute to the successful management of the Post.

(3) A person shall not be competent to be appointed or to act as a member of the Board if he-

- (a) is a member of the National Assembly;
- (b) is an employee of the Post;
- (c) has been declared insolvent or bankrupt under any law in any country and has not been discharged, or made a composition with his creditors and has not paid his debts in full.

5. Resignation and removal from office

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

(2) A member of the Board may be removed from membership thereof by the Minister if-

- (a) any circumstances arise, which, if he were not a member, would cause him to be disqualified for appointment as a member of the Board under section 4(2);
- (b) he becomes of unsound mind;

- (c) he suspends payment of his debts or compounds with his creditors;
- (d) he is absent from 3 consecutive meetings of the Board without such reason as appears to the Minister to be sufficient;
- (e) he is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
- (f) is guilty of serious misconduct in relation to his duties as Chairman or member of the Board; or
- (g) in the case of a person possessed of professional qualifications, he is disqualified or suspended, otherwise than at his own request, from practising his profession in Botswana, or in any other country, by order of any competent authority made in respect of him personally.

6. Tenure of office

(1) A member of the Board, other than the Chairman and the Director General, shall hold office for such period not exceeding 4 years as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for reappointment:

Provided that in appointing members of the Board the Minister shall so specify such periods of appointment that the periods of appointment of not more than one-third of the members shall expire in any one year.

(2) The Chairman of the Board shall hold office as Chairman for a period of 3 years and on the expiration of such period shall be eligible for reappointment.

(3) The Board shall, once in every year, elect from among its members (other than the Director General) a Vice-Chairman for a period of one year.

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

7. Payment of members

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

PART III

Meetings and Proceedings of Board (ss 8-9)

8. Meetings

(1) The Board shall meet for the discharge of its functions at such times and places as the Chairman may appoint, so however that the Board shall meet at intervals not exceeding 3 months.

(2) The Chairman, or in his absence the Vice-Chairman, may, and shall on the request in writing of not less than 2 members of the Board, call an extraordinary meeting of the Board at such time and place as he may determine.

(3) The Chairman, or in his absence the Vice-Chairman, shall preside at every meeting of the Board.

(4) In the absence of both the Chairman and the Vice-Chairman, the members present shall elect one of their number to preside at the meeting.

(5) The quorum at any meeting of the Board shall be not less than one half of the members of the Board:

Provided that the presence of the Director General shall not count towards the constitution of the quorum.

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

Provided that the Director General shall not be entitled to vote unless the Board decides

otherwise in any particular instance.

(7) Any member of the Board who has an interest, or whose spouse has an interest, in any company or undertaking with which the Board proposes to make a contract, or has an interest in any contract which the Board proposes to make, shall disclose the nature of his interest, and shall not vote or take any part in the proceedings of the Board relating to such contract.

(8) The Board may, and shall if the Minister so directs request the attendance of any person to act as adviser at a meeting of the Board, and that person while so attending shall have all the powers of a member except that he shall not vote on any question and his presence at the meeting shall not count towards the constitution of a quorum.

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

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

- (a) meetings of the Board;
- (b) the conduct of its business and other operations in furtherance of the purposes of this Act; and
- (c) the duties of its officers, employees and agents.

9. Signification of documents

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

PART IV

Officers, Employees and Agents of the Post (ss 10-11)

10. Appointment of officers and employees

(1) The Post shall have a Director General who shall be appointed by the Minister upon such terms and conditions as may be determined by the Board.

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

(3) The Director General shall, subject to such directions on matters of general policy as may be given by the Board, be charged with the direction of the business of the Post and of its administration and organization, and the control of the employees of the Post.

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

(5) The Director General may delegate to any senior officer of the Post the exercise of any power which he is authorized to exercise under this Act.

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

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

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

(7) The Board may-

- (a) grant pensions, gratuities or retiring allowances to any officer or employee and may require such officer or employee to contribute to any pension or contributory scheme;
- (b) for the benefit of its officers and employees, establish and make contributions to any pension or superannuation fund or medical fund; and
- (c) from time to time appoint and employ upon such terms and conditions as it may think fit

such agents and contractors as it may deem necessary.

(8) Public officers from Ministries or other Departments may be transferred or seconded to the Post or may with the consent of their supervisors otherwise give assistance thereto.

(9) Officers and employees of the Post shall, in so far as it is not inconsistent with the provisions of this Act, be public officers.

(10) Officers and employees of the Post may become members of the appropriate Trade Union in accordance with the Trade Union legislation in force from time to time.

11. Delegation to committee

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

PART V

Functions, Powers and Duties of the Post (ss 12-16)

12. Functions and powers

(1) The functions of the Post shall be-

- (a) to provide, develop, operate and manage postal services in an efficient and cost effective manner; and
- (b) to carry out such other operations as may appear to the Board to be conducive or incidental to the attainment of all or any of its objectives under this Act or any other law.

(2) The Post shall have all powers necessary or convenient for the performance of its functions and duties and, without prejudice to the generality thereof, shall have the power to-

- (a) acquire and use any kind of property, undertaking, right or privilege and dispose of the same to the Government, or to any person other than a member, officer or employee of the Post or any agent or contractor appointed or employed by the Post;
- (b) enter into agreements in connection with the operation of postal services;
- (c) supply, sell or market air postal services to all persons desiring such services;
- (d) enter into such contracts as may be necessary for the performance of its functions and duties;
- (e) construct or cause to be constructed such works, houses, offices and other buildings and structures as it may deem necessary or expedient for the performance of its functions and duties;
- (f) purchase, take on lease or otherwise acquire or construct or cause to be constructed such tools, appliances, machinery, plant and equipment as it may deem necessary or expedient for the performance of its functions and duties;
- (g) sell, exchange, lease, dispose of, turn to account or otherwise deal with any of its assets or any part thereof, whether movable or immovable, not required for its purposes:

Provided that the immovable property of the Post shall not be sold without the approval in writing of the Minister for the time being responsible for finance;

- (h) invest from time to time, in such manner as it may deem fit, such moneys held by it as may be surplus to its immediate requirements, subject to the approval in writing of the Minister for the time being responsible for finance;
- (i) insure with any company or person against any loss, damage, risk or liability which the Post may incur;
- (j) purchase or sell any materials and stores used in the performance of its functions;
- (k) sell, hire or otherwise dispose of any apparatus used in connection with Postal services; and
- (l) carry on any activity which is reasonably requisite or convenient for or in connection with the discharge of its functions under this Act.

13. Exclusive privilege of the Post

(1) The Post shall have the exclusive privilege of establishing and operating postal

services in Botswana.

(2) Notwithstanding subsection (1) the Minister may, after consultation with the Board, by notice published in the Gazette, exempt services rendered by any person from the provisions of subsection (1) for such period as he may determine.

14. Co-operation with authorities

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

15. Research and records

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

16. Power of Minister to give directions

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

PART VI ***Finances (ss 17-21)***

17. Principles of financial operations

(1) It shall be the duty of the Post to conduct its affairs on sound commercial lines and, in particular, so carry out its functions under this Act and so prescribe the charges payable in respect of the provision by the Post of its postal services as to ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable return.

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

- (a) to meet interest payments on borrowings;
- (b) to provide for repayments to be made each year in respect of loans incurred by the Post to the extent to which such repayments exceed the year's provision for depreciation charged to revenue account;
- (c) to provide a reasonable proportion of the funds needed for expanding the Post's activities and improving its services;
- (d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Board deems it necessary to establish such reserves; and
- (e) to make dividend payments to the Government in respect of its equity interest in the Post if and to the extent deemed appropriate by the Board, after consultation with the Minister, and the Minister for the time being responsible for finance, and having regard to the future financial requirements of the Post.

18. Fixing of tariffs

(1) The Board shall, with the approval of the Minister, which approval shall not be unreasonably withheld, prescribe the tariffs or other charges for which it provides postal services so as to ensure that it is able to comply with the provisions of section 17.

(2) The Board may prescribe different tariffs, charges or methods of charges for different classes or categories of service and for different areas or places.

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

19. Borrowing powers

(1) In order to enable the Post to discharge its functions under this Act and to meet its obligations it may borrow, on such terms and in such currencies as may be agreed between it and any lender, such sums as it may require, subject to the approval of the Minister for the time being responsible for finance.

(2) The Post may charge its assets, undertakings, and revenues with the repayment of any money borrowed together with interest thereon and may issue debentures, bonds or other securities in order to secure the repayment of any money borrowed together with interest thereon and may do all other things necessary in connection with or incidental to such borrowings as are authorized by this section, subject to the approval of the Minister for the time being responsible for finance.

20. Vesting of property in the Post

(1) Any properties, assets, rights, debts, liabilities and obligations of the Government and the benefit and burden of all contracts made by or on behalf of the Government which are part of or concern or relate to postal services, may with the consent of the Board be transferred to and vest in the Post as hereinafter provided on terms and conditions agreed to by the Board.

(2) The Minister may from time to time, by notice published in the Gazette, designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government and contracts made by or on behalf of the Government which are part of, concern or relate to postal services, and as from the date specified in any such designation the properties, assets, rights, debts, liabilities and obligations and the benefit and burden of the contracts so designated shall vest in the Post.

(3)(a) For the purposes of this subsection "appropriate date" means, in respect of any loan agreement made between the Government and any person whereby money was or is to be borrowed by the Government and used for or in connection with postal services, the date of the vesting of such loan agreement in the Post by virtue of the foregoing provisions of this section.

(b) The Post shall pay to the Government, in such manner and on such date or dates as the Minister may, with the concurrence of the Board and the Minister for the time being responsible for finance, from time to time specify, any amount expended or advanced by the Government for or in connection with postal services comprising-

- (i) all amounts repaid in respect of capital or interest by the Government to any person before the appropriate date under any loan agreement to which paragraph (a) applies;
- (ii) all amounts disbursed or to be disbursed by the Government in repayment of any other loan raised or to be raised by the Government, and interest thereon, to the extent to which such loan has been or will be applied to postal services which, before the date specified in a designation pursuant to subsection (2), has not been offset by an amount or amounts credited to the Consolidated Fund for that purpose;
- (iii) amounts equal to the outstanding debit balance of any advances made by the Government and all costs incurred by the Government as a result of making such advances;
- (iv) any other amounts paid or to be paid by the Government which, before the date specified in a designation pursuant to subsection (2), has not been offset by an amount or amounts credited to the Consolidated Fund for that purpose.

(4) If, within one month from the date specified by the Minister under subsection (3)(b) for the payment of any amount payable by the Post to the Government under that subsection, the Post fails to pay such amount, it shall pay interest thereon as from the date specified as aforesaid at such rate or rates as the Minister may, with the concurrence of the Minister for the time being responsible for finance, from time to time determine.

21. Accounts and audit

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

(2) The accounts of the Post in respect of each financial year shall, within 4 months or such extended time after the end thereof as the Minister may direct, be audited by the Auditor-General or any auditor appointed by the Auditor-General (hereinafter referred to as "appointed auditor").

(3) The Auditor-General or any appointed auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which he deems it pertinent to comment, whether or not-

- (a) he has received all the information and explanations which, to the best of his knowledge and belief, were necessary for the performance of his duties as auditor;
- (b) the accounts and related records of the Post have been properly kept;
- (c) the Post has complied with all the financial provisions of this Act with which it is the duty of the Post to comply; and
- (d) the statement of accounts prepared by the Post was prepared on a basis consistent with that of the proceeding year and represents a true and fair view of the transactions and financial affairs of the Post.

(4) The report of the Auditor-General or the appointed auditor and a copy of the audited accounts shall, within 7 days of the completion thereof, be forwarded to the Minister and to the Board.

(5) The Minister shall, within 30 days of receiving the report and a copy of the audited accounts, lay such report and accounts before the National Assembly.

PART VII

General (ss 22-28)

22. Annual report

(1) The Board shall, within a period of 6 months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on the operations of the Botswana Postal Services during such year together with the auditor's report and the audited accounts as provided for in section 21, and the Board shall publish them in such manner as the Minister may specify.

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

23. Compulsory acquisition of land

For the purposes of any written law for the time being in force relating to the compulsory acquisition of land for public purposes, the functions and operations of the Post shall be deemed to be public purposes.

24. Resettlement measures

If the operations of the Post make necessary resettlement of any person dwelling upon any communally owned land, the terms of such resettlement shall be subject to the agreement of the Government and of the local authorities of the area concerned.

25. Compensation for loss or damage

(1) In the exercise of its powers under this Act in relation to the execution of works or interference with property, the Post shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons who have sustained loss or damage by reason or in consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application for such compensation shall be determined by arbitration in accordance with the provisions of the Arbitration Act.

(2) For the purpose of such arbitration the parties shall be deemed to be parties to a submission in which the reference is to two arbitrators.

26. Power to call for information

The Minister may, for purposes associated with the administration of this Act, require the Board to provide him with estimates of the Post's future revenue and expenditure, and such other information relating to its activities and operations, including books of accounts, records, documents and agreements relating to postal services operated by the Post, as he may specify.

27. Power of Board to make bye-laws

The Board may, with the approval of the Minister, make bye-laws for any purpose connected with its powers, functions and duties under this Act, and may impose penalties for breach of any such bye-laws.

28. Transitional provisions

(1) Unless the contrary intention is indicated by the Board, every member of the staff of the former Department of Postal Services shall be deemed to have been duly appointed to an equivalent post under this Act.

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

PART VIII

Transmission of Postal Articles (ss 29-42)

29. Registration of postal articles

(1) The sender of any postal article may, upon payment of the prescribed fee in addition to the ordinary postage, have that article registered and obtain a receipt for it; but no such registration or receipt shall confer on any person any right to compensation or impose upon any officer any liability for the loss of any such article or of the contents thereof:

Provided that the Director General may in an appropriate case, in his discretion pay compensation for the loss of any registered postal article or of the contents thereof.

(2) Any postal article containing coin, bank notes, stamps, precious metals, precious stones or other articles of a like nature which have an intrinsic or marketable value shall be registered and if not so registered shall be liable on delivery to a charge equal to double the amount of any deficiency between the postage paid and the correct charge had the article been registered at the time of posting. No compensation shall be paid or payable in respect of the loss of any postal article, required to be registered under this subsection, but which is not so registered at the time of posting.

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

For the purposes of this Act-

- (a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed;
- (b) the placing of a postal article in a pillar box or other receptacle provided for the purpose by or with the approval of the Post, or the delivery of a postal article to an officer or other person authorized by the Director General to receive postal articles of that description, shall be deemed to be delivery to a post office;
- (c) the delivery of a postal article at the house or office of the person to whom the article is addressed or to his servant or agent or other responsible person or at the address specified on such article shall be deemed to be delivery to the person addressed; and
- (d) delivery into a private box or private bag shall be deemed to be personal delivery to the addressee.

31. Redirection and interception of postal articles

(1) The redirection of any unopened postal article (other than a parcel) from one place to

another may be effected free of charge provided the new address has been fully prepaid, but registered articles redirected by the public shall be subject in each case to a further fee for registration.

(2) Any redirected article which appears to the Director General to have been opened or tampered with shall be treated as if it were posted for the first time and shall be chargeable accordingly.

(3) Any article arrested or intercepted in transit through the post-

- (a) at the request of either the sender or the addressee thereof, shall be liable to an additional charge equal to the ordinary rate of postage from the place of the original address to the place of the new address and any article which under the provisions of this Act may be returned to the sender thereof shall if reposted be liable again to postage;
- (b) for delivery to the sender or addressee at the office in which stoppage is effected, shall be liable to such special fee as may be prescribed.

(4) Nothing contained in subsection (3) shall require the Director General to arrest or intercept any postal article.

32. Articles deemed to be posted in contravention of Act

A postal article received in a post office shall be deemed to have been posted in contravention of this Act if-

- (a) the postage stamps thereon have been previously used, obliterated or defaced;
- (b) any blasphemous, indecent, obscene, offensive or libellous matter appears on the outside thereof or any indecent or obscene matter is enclosed therein; or
- (c) it is posted or contains anything in fraud of or contrary to the provisions of this Act or any other law.

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

Any postal article which is-

- (a) without address or bears an illegible address or is otherwise undeliverable;
- (b) refused by the person to whom it is addressed; or
- (c) posted or reasonably suspected to have been posted in contravention of this Act or any other law,

shall be sent to the Returned Letter Office of Botswana and dealt with as may be prescribed:

Provided that any article referred to in paragraph (a) or (b) which bears on the outside thereof the name and address of the sender may be returned to him.

34. Articles other than letters may be opened for examination

(1) Any postal article, other than a letter, may be opened for examination in order to ascertain whether or not that article is entitled to transmission at the rate of postage prepaid thereon or has been posted in contravention of this Act.

(2) The decision of the Director General as to whether or not any postal article is a letter or any description of postal article shall be final.

35. Treatment of unclaimed letters in Returned Letter Office

Any postal article originally posted within Botswana which is sent to the Returned Letter Office in accordance with section 33, or which is undelivered, shall be opened by an officer authorized by the Director General for that purpose and shall, unless it contains any valuable or saleable enclosure or has in the opinion of the Director General been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, be returned to the sender thereof if his name and address are known, and may, if the sender refuses to receive it or if his name and address are not known, be sold or destroyed.

36. Unclaimed articles of value and articles posted in contravention of Act

(1) Any postal article opened under the provisions of this Act which contains any valuable or saleable enclosure shall be safely kept and a record thereof and of its contents shall be made and preserved.

(2) The Director General shall, unless any such postal article or the contents thereof have in his opinion been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, cause notice of his possession of that article and of the contents thereof to be sent to the person to whom it is addressed or, if he cannot be found, to the sender thereof if he can be found.

(3) The Director General shall, upon application by the person to whom the notice has been sent, cause such postal article and its contents to be delivered to such person upon payment of all charges due thereon.

(4) If no application under subsection (3) is made within 3 months after the sending of a notice under subsection (2), or if the postal article in question or the contents thereof has in the opinion of the Director General been posted in contravention of this Act or with intent to evade payment of any charge properly payable thereon, such article and its contents shall (without affecting the liability to any penalty or punishment to which the sender may be subject), be destroyed, sold or otherwise disposed of as the Director General may direct.

(5) The proceeds of the sale of any postal article or the contents thereof, as well as any such contents consisting of money or any order or security for money, shall be paid into and form part of the postal revenue.

(6) Any such order or security for money shall for the purpose of procuring payment be deemed to be the property of the Director General.

37. Sender of undelivered article liable for all charges due

(1) The sender of an undelivered postal article shall on demand pay all charges due thereon, and shall, in the event of his refusal to pay such charges, be guilty of an offence and liable to a fine of P10,00.

(2) This section shall not be construed as releasing the person to whom a postal article is originally addressed from liability to pay the charges due thereon if such a postal article is delivered to him.

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

Save as expressly provided in this Act, no postal article shall be delayed in transmission or returned to the sender or be delivered to any person not named in the address thereof except with the consent in writing of the addressee or on the special authority of the Director General.

39. Undelivered articles of no value and newspapers may be destroyed

Notwithstanding anything to the contrary contained in section 35 or 38 an undelivered postal article, which appears to be of no appreciable value or importance, and an undelivered newspaper may, after retention for the period prescribed, be sold, destroyed or otherwise disposed of as the Director General may direct.

40. Articles addressed to insolvent person

When the estate of any person has been sequestrated by a competent court in Botswana, the Director General shall cause all postal articles addressed to such person to be delivered to the trustee in such insolvent estate or, if no trustee has been appointed, to the Master of the High Court.

41. Articles addressed to deceased person

Postal articles addressed to a deceased person may be delivered to the executor or administrator of such deceased person on the production of letters of administration or, pending production of letters of administration, at the address indicated thereon.

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

When the Director General is satisfied by any advertisement, letter, circular or other documentary evidence that any person is conducting or assisting as agent or otherwise in conducting an illegal lottery, or is dealing in indecent or obscene matter, and is using the services of the Post for the purpose thereof, the Director General may detain or delay all postal articles addressed to such person or his agent or representative without the name of any person

appearing thereon, and all such postal articles may be opened and returned to the senders thereof or otherwise disposed of as the Director General may deem fit.

PART IX

Remittance of Money through Post Office (ss 43-45)

43. Remittance of money through the Post

Any person may remit money through the Post to any other person whether in or outside Botswana at such rates of commission as may be prescribed and the Director General may authorize any office in the Post to issue and pay money orders, postal orders or any other document prescribed for the purpose of remitting money.

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

The Director General may refuse to issue or pay a money order, postal order or other document to a person to whom the provisions of section 42 apply and, where payment of any such order or other document is refused, such order may, if it was issued in Botswana, be returned to the person to whom it was originally issued, or otherwise disposed of as the Director General may deem fit, or, if it was issued outside Botswana, the amount thereof shall be returned to the postal authority of the country in which it was issued.

45. Money orders, etc., to be deemed bank notes

(1) A money order, postal order or other document issued under section 43 shall be deemed to be a bank note or any order for the payment of money and a valuable security within the meaning of any law relating to forgery or theft.

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

PART X

Offences and Penalties (ss 46-61)

46. Forging stamps, dies, etc.

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

- (a) makes, alters, imitates or imports or assists in making, altering, imitating or importing any postage stamp, date stamp, card, envelope, wrapper cover or any money order, postal order, postal draft or savings bank warrant or any other warrant or order for the payment of money through the Post, or acknowledgement of deposit or any form or paper similar to that used or made under the authority or for the purposes of this Act or by any postal authority, or uses, issues, offers, exposes for sale, sells, deals in, sends by post or disposes of or has in his custody or possession any such postage stamp, date stamp, card, envelope, wrapper, cover, money order, postal order, postal draft, savings bank warrant or any other warrant or order, acknowledgement of deposit, form or paper, knowing it to have been made or altered or to be an imitation contrary to this section;
- (b) engraves or in any manner makes upon any plate or material any stamp, mark, figure or device in imitation of or resembling any stamp, mark, figure or device used or made for the purposes of this Act or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any plate or material so engraved or made;
- (c) makes or assists in making or has in his custody or possession any mould, frame or other instrument having thereon any word, letter, figure, mark, line or device peculiar to paper provided, used or made for any postage stamp or for any other purpose of this Act or by any personal authority;
- (d) makes or assists in making or has in his custody or possession any paper in the substance of which appear any word, letter, figure, mark, line or device peculiar to paper provided, used or made for any postage stamp or for any other purpose of this Act or by any postal authority, or makes, purchases, sells, disposes of or receives or has in his custody or possession any paper provided or made for the purposes of being

used for any postage stamp or for any other purposes of this Act or by any postal authority before the same has been issued for public use;

- (e) makes use of any stamp, dye, plate or paper engraved or made for the purposes of this Act or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any paper or material whatever bearing an impression or mark of any such stamp, dye, plate or paper; or
- (f) makes on any envelope, wrapper, card, form or paper any mark in imitation of or similar to or purporting to be any official stamp or mark used for the purposes of this Act or by any postal authority, or any word, letter, device or mark which signifies or implies or may reasonably be regarded as signifying or implying that any article bearing such word, letter, device or mark has been or is entitled to be sent through the post,

shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 5 years, and any stamp, dye, plate, paper, instrument or other material found in the possession of such person in contravention of this section shall be seized and forfeited to the State.

47. Removing marks from stamps, etc., with intent to defraud

(1) Any person who, with intent to defraud-

- (a) removes from an article sent by Post or from a document used for the purposes of this Act any stamp which has been affixed thereon, or wilfully removes, either actually or apparently, from any stamp which has been previously used, any mark or impression which has been made thereon at any post office, or knowingly utters, issues or uses any stamp or any part thereof which has been so removed or from which any such mark or impression has been removed;
- (b) erases, cuts, scrapes, defaces, obliterates or otherwise discharges or removes from, either actually or apparently, or in any manner adds to or alters any mark or impression upon, a money order, postal order, postal draft, savings bank warrant, or other order or warrant, or acknowledgement of deposit, paper or other material provided, used or made for the purposes of this Act or by any postal authority;
- (c) makes, does or practises or is concerned in any other act, contrivance or device for which no specific penalty is provided, or attempts unlawfully to evade payment of any of the rates, fees or duties payable under this Act,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) For the purposes of this Part the sender of a postal article shall, unless the contrary is proved, be deemed to be the person by whom any postage stamp upon that article was affixed.

(3) In any proceedings in respect of an offence under this section the burden of proving an absence of intent to defraud shall lie on the accused.

48. Offence in connection with carriage and delivery of mail

Any person authorised to receive or in any way to handle mail who-

- (a) negligently loses or wilfully detains, delays, misdelivers or omits to dispatch any mail (whether or not the same is afterwards recovered or delivered) or communicates or divulges the contents of any postal article;
- (b) while in charge of any mail, leaves it, or suffers any person, not being the guard or person employed for that purpose, to travel in the place appointed for the guard in or upon any conveyance carrying the mail, or to travel in or upon any such conveyance not authorized to carry passengers or upon any horse or other animal conveying that mail;
- (c) is guilty of carelessness, negligence or any misconduct where the safety of any mail is endangered;
- (d) while in charge of any mail is intoxicated or loiters or wilfully misspends or loses time so as to retard the arrival of the mail at its proper destination within the time fixed for its

arrival, or does not use due care and diligence to safely convey the mail at the due rate of speed;

- (e) gives false information of any assault or attempt at robbery upon him; or
- (f) without due authority, collects, receives, conveys or delivers any postal article otherwise than in the ordinary course of post,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

49. Fraudulent, injurious and offensive practices in connection with postal articles and premises

(1) Any person who-

- (a) with intent to defraud, puts into any post office anything purporting to be a postal article within the exemptions specified in this Act, or any postal article purporting to belong to a class, in respect of which a lower rate of postage or no postage is chargeable, or insufficiently stamped which if sent alone would be liable to postage;
- (b) with intent to defraud, puts into any post office any article in or upon or with which there is any communication, intelligence, character, figure, number, mark, matter or thing not allowed by this Act or by any other law, or wilfully subscribes on the outside of any posted article or otherwise a false statement of the contents thereof;
- (c) puts into any post office any article in which or with which or upon which there is any indecent or obscene matter, or anything of a profane, defamatory or grossly offensive character;
- (d) without due authority, the proof of which shall lie upon him, places or paints anything whatsoever upon, or wilfully injures, disfigures or tampers with any post office or any card, notice or other property of or used by or on behalf of the post, or commits a nuisance on or against any post office or against or upon such card, notice or other property;
- (e) detains, secretes or keeps any mail or postal article which ought to have been delivered to another person or which has been found by himself or by any other person; or
- (f) by false representation induces any officer to deliver to him or to any other person any postal article not addressed to or intended for either of them,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months, without prejudice to any right the Director General may have of proceeding civilly against any person convicted under paragraph (d) for compensation for such damage as may have been caused by him.

(2) In any proceedings in respect of any offence under paragraph (1)(a) or (b) the burden of proving an absence of intent to defraud shall lie on the accused.

50. Placing of dangerous or noxious articles and stoppage of mail

(1) Any person who-

- (a) sends in or with any postal article or puts into or against any post office any fire, match or light or any explosive, dangerous, filthy, noxious or deleterious matter or thing or any matter or thing which is likely to injure or damage any post office, person or mail;
- (b) steals any mail or steals from any mail or post office or from the possession or custody of any officer, or for any purpose embezzles or fraudulently secretes or destroys any postal article or any of the contents thereof;
- (c) receives any mail or postal article or any of the contents thereof knowing the same to have been stolen, embezzled or fraudulently secreted or to have been sent or intended to be sent by post; or
- (d) stops any mail with intent to rob or search such mail, shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 7 years.

(2) The Board may make bye-laws exempting from the provisions of this section noxious

or deleterious matter sent in the interests of public health or justice in accordance with such requirements as it may prescribe.

51. Tampering with mail

Any officer who otherwise than in pursuance of his duty opens or tampers with or wilfully destroys, makes away with or secretes or suffers to be opened or tampered with, destroyed, made away with or secreted any mail or postal article, and any person who opens or tampers with or wilfully destroys, makes away with or secretes any mail shall be guilty of an offence and shall be liable to a fine of P2 000,00 and to imprisonment for 5 years.

52. Wilfully obstructing or delaying mail

Any person who wilfully interferes with the conveyance of any mail or through whose act or neglect the conveyance of any mail is interfered with shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

53. Wilfully opening or delaying postal articles

(1) Any person, not being an officer, who wilfully opens any postal article which he knows ought to have been delivered to another person, or knowingly does any act or thing whereby the due delivery of that article to such other person is prevented, obstructed or delayed, shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) Nothing in this section contained shall apply to any person who does any act to which this section applies where that person is the parent or in the position of parent or guardian of the addressee and the addressee is a minor under 16 years of age or a ward.

(3) No prosecution under this section shall be instituted except by the direction or with the consent of the Director General.

54. Unauthorized use of words "Post Office", "Botswana Mail", etc.

Any person who, without the authority of the Director General, the proof of which shall lie upon him-

- (a) places or maintains or suffers to be placed or maintained, or to remain in, on or near any place belonging to him or under his control the word "Post Office" or any other word or mark which may imply or may give reasonable cause for believing that place to be a post office; or
- (a) places or maintains or permits to be placed or maintained or to remain on any vehicle or vessel the words "Botswana Mail" or any other word or mark which may imply or may give reasonable cause for believing that such vehicle or vessel is used for the conveyance of mail,

shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

55. Unauthorized entry of premises, obstruction of business, and refusal to comply with regulations

(1) Any person, not being an officer, who without the express permission of the Director General or of an officer having authority to give permission, enters any part of a post office in which is carried on any of the operations in respect of which an oath of secrecy is required to be taken by officers, or whilst in any post office, wilfully obstructs the course of business of the post or behaves in a disorderly manner or who wilfully obstructs, hinders or delays any officer in the execution of his duty, or who fails to comply with any regulations which have been issued, or by-laws to secure the comfort and convenience of the public or the safety of the premises, and which state that failure to comply therewith shall be an offence, shall be guilty of an offence and shall be liable to a fine of P200,00 and to imprisonment for 6 months.

(2) An officer may require any person committing an offence under this section to leave the post office in question immediately, and any such person who fails to comply with such a requirement may be removed by any officer, and any member of the police force shall on demand by an officer remove or assist in removing any such person.

56. Frauds in connection with money orders, etc.

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

57. Personating officers of the Post with fraudulent intent

Any person who, with fraudulent intent, personates or represents himself to be an officer of the Post shall be guilty of an offence and shall be liable to a fine of P800,00 and to imprisonment for 2 years.

58. False declaration

Any person who in any declaration prescribed by this Act makes a false statement knowing the same to be false shall be guilty of an offence and shall be liable to a fine of P400,00 and to imprisonment for 6 months.

59. Attempting to commit or procuring commission of offences

Any person who attempts to commit any offence under this Act, or solicits, or authorizes or endeavours to employ, cause, procure, aid, abet, incite or counsel any other person to do anything the doing whereof is an offence under this Act, shall be guilty of an offence and liable to the same punishment as if he actually committed the offence.

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

In any prosecution for any crime or any offence committed in respect of the Post or of any mail or any property, moneys, money order, postal order or other document authorized to be used for the purpose of remitting, paying, collecting or depositing money through or with the Post, or with respect to any act, deed, matter or thing which has been done or committed with any malicious, injurious or fraudulent intent relating to or concerning the Post or any such mail, property, moneys, money order, postal order or other document, it shall be sufficient-

- (a) to allege that any such mail, property, moneys, money order, postal order or other document belongs to or is in the lawful possession of the Director General and to put the same in evidence, and it shall not be necessary to allege or prove the same to be any value;
- (b) to allege that any such act, deed, matter or thing was done or committed with intent to injure or defraud the Director General without setting forth his or any other name, addition or description whatsoever; and
- (c) if the offender be an officer, to allege that the offender was an officer of the Post at the time of the committing of the offence without stating the nature or particulars of his employment.

61. Evidence: acceptance of official marks

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

- (a) the official stamp or mark thereupon denoting the sum due shall be *prima facie* evidence of the liability of that postal article to the charge specified thereon; and
- (b) the production of any such postal article having thereon a post office stamp or mark denoting that the article has been refused or that the person to whom the same is addressed is dead or could not be found shall be *prima facie* evidence of the fact denoted.

PART XI

Miscellaneous (ss 62-65)

62. Limitation of liability

(1) Save as otherwise provided in this Act, no liability shall rest on any member of the Board or the Director General or any officer or employee of the Post by reason of any error, default, delay, omission, damage, destruction, non-delivery or loss in respect of any postal article unless it is established that it was due to the negligence or malfeasance of the said member, officer or employee.

(2) The *bona fide* payment of any sum of money under the provisions of this Act shall, to whomever made, discharge the Post from all liability in respect of such payment.

(3) If any person by fraudulent means obtains payment of any sum credited to a depositor's savings bank account, no liability shall rest on the Post, but the Director General may at his absolute discretion make good to the depositor any loss sustained or any part thereof.

63. Detention of postal articles

(1) Any postal article which is reasonably suspected of containing anything which will afford evidence of the commission of a criminal offence or reasonably suspected of being sent in order to further the commission of a criminal offence or to enable the detection of a criminal offence to be concealed shall, on the written request of a police officer of or above rank of Senior Inspector, be detained by the officer in charge of any post office in which it is or through which it passes and the Director General shall, if authorized thereto by such police officer, cause such postal article to be handed over to the said police officer.

(2) On the occurrence of a public emergency or in the interests of public safety or tranquility, the President may by order in writing addressed to the Director General direct that any postal article or class or description of postal article in the course of transmission by post within Botswana be intercepted or detained or be delivered to any officer mentioned in the order or disposed of in any other manner.

(3) A certificate signed by the President shall be conclusive proof of the existence of a public emergency or that any act done under subsection (2) was in the interests of public safety or tranquility.

64. Regulations

The Minister may, after consultation with the Board, make regulations generally for carrying into effect the provisions of this Act and prescribing anything that under this Act requires to be prescribed.

65. Repeal and savings

(1) The Post Office Act, 1980 is hereby repealed.

(2) Notwithstanding the repeal of the Post Office Act, 1980 any statutory instruments made or any licences issued and in force immediately prior to the commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, and until they are revoked or amended, continue in force as if made or issued under the corresponding provisions of this Act.

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