

CHAPTER 66:01
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Act 17, 1999,
S.I. 54, 2005.

An Act to re-enact with substantial amendments the provisions that regulate the law relating to Mines and Minerals; to provide for the granting, renewal and termination of mineral concessions; to provide for the payment of royalties; and for matters incidental to and connected to the foregoing.

[Date of Commencement: 1st December, 1999]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Mines and Minerals Act.

2. Interpretation

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

"associated company" means a company that directly or indirectly controls or is controlled by a party to the mineral project or a company which directly or indirectly controls or is controlled by a company which controls a party to the mineral project; for the purposes of this definition the term "controls" means ownership by one company of more than 50% of the voting securities of the other company, or the power to direct, administer and dictate policies of the other company even where the voting securities held by such company exercising such effective control in that other company is less than 50%; the term "controlled" shall be construed accordingly;

"associated mineral" means a mineral which occurs with a mineral resource in such circumstances that it is physically impossible to mine the mineral resource without also mining

the mineral found in association with the mineral resource;

"authorised officer" means a person authorised by the Minister to exercise the powers conferred by section 7(1);

"default" means a breach of a mineral concession or of any provision of this Act or any related legislation, and the term 'in default' shall be construed accordingly;

"diagram" means a document containing geometrical, numerical and verbal representations of a piece of land, which has been signed by a land surveyor and which has been approved or certified by the Director of Surveys and Mapping or other officer empowered under the Land Survey Act, so to approve or certify a diagram;

"Director of Mines" means the officer for the time being occupying the position of Director of Mines in the Ministry responsible for minerals, energy and water affairs;

"Director of Geological Survey" means the officer for the time being occupying the position of Director of Geological Survey in the Ministry responsible for minerals, energy and water affairs;

"holder" or **"holder of a mineral concession"** means the holder of a mineral concession under this Act;

"industrial mineral" means barite, basalt, clay, dolomite, feldspar, granite, gravel, gypsum, laterite, limestone, mica, magnesite, marble, phosphate, rock, sand, sandstone, slate and talc, when used for agricultural, building, road making or industrial purposes and such other minerals as may be prescribed in the regulations to be industrial minerals;

"mine", when used as a noun, means any place, excavation or working wherein, whereon or whereby any operation connected with mining is carried on, together with all buildings, premises, erections and appliances belonging or appertaining thereto above and below the ground for the purpose of winning, or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

"mine", when used as a verb, means intentionally to win minerals and includes any operations directly or indirectly necessary therefor or incidental thereto, and "mining" shall be construed accordingly;

"mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but excluding petroleum as defined in section 2 of the Petroleum (Exploration and Production) Act, and public and private water when used for a primary, secondary or tertiary use, as defined in the Water Act;

"mineral concession" means a prospecting licence, a retention licence, a mining licence, or a minerals permit;

"minerals permit" means a permit issued under section 52;

"minerals permit area" means land subject to a minerals permit;

"mining area" means the land subject to a mining licence;

"mining licence" means a right to mine required under Part VI;

"ore" means a natural aggregate of one or more minerals which may be mined and sold at a profit;

"private land" means all land and all interests in land other than unalienated land or interests therein;

"programme of mining operations" means such programme approved on the granting or renewal of a mining licence and includes any amendment thereto made in pursuance of the provisions of this Act;

"programme of prospecting operations" means such programme approved on the granting or renewal of a prospecting licence and includes any amendment thereto made in pursuance of the provisions of this Act;

"prospect" means intentionally to search for minerals and includes determining their extent and economic value;

"prospecting area" means the land subject to a prospecting licence;

"prospecting licence" means a right to prospect acquired under Part IV;

"radioactive mineral" means a mineral which contains by weight at least one-twentieth of one per cent (0,05 per cent) of uranium or thorium or any combination thereof, including but not limited to the following-

- (a) monazite sand and other ores containing thorium;
- (b) carnotite, pitchblende and other ores containing uranium;

"retention area" means land subject to a retention licence;

"retention licence" means a right of retention over a prospecting area acquired under Part V;

"small scale mining" means the intentional winning of minerals other than diamonds in operations involving the mining and processing of less than 50 000 tonnes of raw ore per annum and in which the overall investment in fixed assets does not exceed P1 million.

"specially authorised officer" means an authorised officer specially authorised by the Minister to exercise the powers conferred by section 7(2);

"termination" means the extinguishment of a mineral concession whether by expiry of time, surrender or cancellation, and where any surrender or relinquishment is in respect of part only of the area covered by a mineral concession then the mineral concession shall be deemed to have been extinguished in respect of that surrendered or relinquished area;

"tribal area" has the meaning assigned to it under the Tribal Land Act;

"working for profit" means producing a mineral product with the intention of use or sale.

(2) Where in this Act provision is made for a matter to be referred to arbitration, the matter shall be referred to a single arbitrator appointed by the parties and finally resolved under the rules of the International Centre for the Settlement of Investment Disputes in force from time to time or in accordance with such other rules or procedures as the parties may agree.

(3) 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.

(4) Arbitration proceedings shall be conducted in accordance with the Arbitration Act and conducted in English and shall be held in Gaborone, unless the parties otherwise agree.

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

- (a) in the case of a prospecting licence, such application, report or document shall be submitted through the Director of Geological Survey; and
- (b) in the case of any other mineral concession and in all other cases, shall, except where otherwise stated, be submitted through the Director of Mines.

(6) The Minister may exercise any of his functions through the Permanent Secretary, the Director of Mines or the Director of Geological Survey.

PART II

Ownership of Minerals and Acquisition of Mineral Rights (ss 3-6)

3. Ownership of minerals vested in Republic

Subject to the provision of the Mineral Rights in Tribal Territories Act, all rights of ownership in minerals are vested in the Republic and the the Minister shall ensure, in the public interest, that the mineral resources of the Republic are investigated and exploited in the most efficient, beneficial and timely manner.

4. Act not to apply to petroleum

No right to explore for or produce petroleum (as defined in section 2 of the Petroleum (Exploration and Production) Act) shall be granted or exercised under this Act.

5. Acquisition of mineral concession

(1) Subject to the provisions of this Act, the right to prospect for, to retain and to mine, minerals may be acquired and held only under and in accordance with the provisions of this Act,

notwithstanding any right of ownership or otherwise which any person may possess in and to the soil on, in or under which minerals are found or situate.

(2) No person may prospect for or mine minerals except as provided in this Act.

(3) Nothing in this Act shall prevent a member of any tribe from taking, subject to such conditions and restrictions as may be prescribed, minerals from any land from which it has been the custom of members of that tribe to take minerals and to the extent that this is permissible under the customary law of that tribe.

(4) Notwithstanding the provisions of this Act, the Minister may, in the public interest and subject to such conditions as he may determine, authorize any person to undertake non commercial investigations into the geological resources of Botswana.

6. Restriction on acquisition of mineral concession

No mineral concession shall be granted to or held by-

- (a) an individual who-
 - (i) is under the age of 18 years;
 - (ii) not being a citizen of Botswana, 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, any related or similar 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 P1000 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 mining licence, such company is incorporated under the Companies Act, and intends to carry on the sole business of mining under that mining licence;
 - (iii) which is in liquidation or under judicial management except where such liquidation or judicial management is a part of a scheme for the reconstruction or amalgamation of such company; or
 - (iv) which has among its directors or shareholders any person who would be disqualified in terms of paragraph (a)(iii) and (iv).

PART III

Administration (ss 7-12)

7. Power of certain officers to enter upon prospecting areas, etc

(1) An authorized officer may, at all reasonable times, enter upon any prospecting area, retention area, mining area, minerals permit area or any premises or workings thereon or thereunder, other than a dwelling-house, for the purpose of-

- (a) generally inspecting such area, premises or workings and examining prospecting or mining operations or the treatment of minerals being performed or carried out thereon;
- (b) ascertaining whether the provisions of this Act are being complied with;
- (c) ascertaining whether any nuisance or breach of environmental obligations exists in such area, premises or workings;
- (d) giving directions and taking steps to enforce any provisions of this Act, or to abate or remove any nuisance;
- (e) taking soil samples or specimens of rocks, ore, concentrates, tailings or minerals situated upon such area, premises or workings for the purpose of examination or assay;
- (f) examining books, accounts, vouchers, documents or records of any kind; or
- (g) obtaining such information as he may deem necessary.

- (2) A specially authorized officer may-
- (a) enter at all reasonable times upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary;
 - (b) break up the surface of such land for the purpose of ascertaining the rocks or minerals within or under the same;
 - (c) take and carry away samples and specimens of the soil, and of rocks or minerals found thereon, therein or thereunder;
 - (d) fix any post, stone, mark or object to be used in the survey of any such land;
 - (e) dig up any ground for the purpose of fixing any such post, stone, mark or object;
 - (f) enter into or upon any land through which it may be necessary to pass for the purposes of such survey:

Provided that-

- (i) it shall not be lawful to fix any post, stone, mark or object within any walled or fenced garden or orchard without the consent of the lawful occupier thereof;
- (ii) as little damage and inconvenience as possible shall be caused by the exercise of the powers conferred by this subsection and the owner or lawful occupier thereof shall be entitled to compensation for any damage sustained in the exercise thereof; and
- (iii) before abandoning any land all excavations shall be backfilled or otherwise made safe.

(3) Authorised and specially authorised officers shall be appointed by the Minister by notice in the *Gazette*.

8. Power to require production of records

The Minister may direct the holder of a mineral concession to produce for inspection by an authorised officer any books, accounts, vouchers, documents or records of any kind concerning the mineral concession.

9. Indemnity of officers

No public officer or other authorized officer or Government nominated director of any holder of a mineral concession shall be liable for anything 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 or in his capacity as a director as aforesaid.

10. Recovery of fees, etc.

Any fees, dues, rents, royalties or payments which may become due in respect of any mineral concession or under the provisions of this Act shall be a debt due to Government and recoverable in a court of competent jurisdiction.

11. Retention of cores and samples

(1) No core obtained in the exercise of rights conferred by a mineral concession shall be destroyed or otherwise disposed of except for the purposes of assay, identification or analysis without the permission in writing of the Minister, which permission shall not be unreasonably withheld.

(2) Where any core is retained for the purpose of complying with subsection (1), there shall be maintained a record in such degree of particularity as is 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 core in contravention of subsection (1) or fails to maintain a record as required by subsection (2) shall be guilty of an offence.

12. Preference for Botswana products, etc.

(1) The holder of a mineral concession issued under this Act, shall, in the conduct of his operations under such concession, 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 mineral concession 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 mining 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 IV

Prospecting Licences (ss 13-24)

13. Application for prospecting licence

A person wishing to obtain a prospecting licence shall make application to the Minister by completing Form I set out in the First Schedule.

14. Consideration of application for prospecting licence

(1) The Minister shall grant a prospecting licence if-

- (a) the applicant has, or has secured access to, adequate financial resources, technical competence and experience to carry on effective prospecting operations;
- (b) the proposed programme of prospecting operations is adequate and makes proper provision for environmental protection;
- (c) the proposed prospecting area is not the same as, nor does it overlap an existing prospecting area, retention area, mining area or minerals permit area in respect of the same mineral or associated mineral; and
- (d) the applicant is not in default.

(2) The Minister may cause such investigations to be made or such negotiations or consultations to be carried on as he may deem necessary to enable him to assess whether or not the criteria in subsection (1) has been satisfied.

(3) Where an application is made for a prospecting licence in respect of an area over which a previous prospecting licence in respect of the same or an associated mineral has been held for seven years, no new prospecting licence shall be granted before a period of three months has elapsed since the expiry of the previous licence, and the Minister shall in the event of competing applications grant a prospecting licence to the applicant which in his opinion has the best proposed programme.

15. Notification of grant or rejection

The Minister shall cause the applicant to be notified in writing of his decision on the application and, if the prospecting licence is refused, the Minister shall give reasons for such refusal.

16. Form and content of prospecting licence

(1) A prospecting licence shall be in Form II of the First Schedule.

(2) There shall be appended to a prospecting licence the programme of prospecting operations.

17. Duration and renewal of prospecting licence

(1) Subject to this Act, a prospecting licence shall be valid for such period as the applicant has applied for, which period shall not exceed three years.

(2) The holder of a prospecting licence may, at any time not later than three months before the expiry of such licence, apply to the Minister by completing Form I set out in the First Schedule for renewal thereof stating the period for which the renewal is sought and submitting together with the application-

- (a) a report on prospecting operations so far carried out and the direct costs incurred thereby; and
- (b) a proposed programme of prospecting operations to be carried out during the period of renewal and the estimated cost thereof.

(3) Subject to this Act, the applicant shall be entitled to the grant of no more than two renewals thereof, each for the period applied for, which periods shall not in either case exceed two years, provided that-

- (a) the applicant is not in default; and
- (b) the proposed programme of prospecting operations is adequate.

(4) Before rejecting an application for renewal under subsection 3(a), the Minister shall give notice of the default to the applicant and shall call upon the applicant to remedy such default within a reasonable time.

(5) Before rejecting an application for renewal under (3)(b), the Minister shall give the applicant opportunity to make satisfactory amendments to the proposed programme of prospecting operations.

(6) Notwithstanding the provisions of subsection (3), the Minister may renew a prospecting licence for a period or periods in excess of the periods specified in that subsection where a discovery has been made and evaluation work has not, despite proper efforts, been completed.

18. Discovery of minerals not included in prospecting licence

(1) If, in the course of exercising his rights under a prospecting licence, the holder thereof discovers any mineral not included therein, he may apply to the Minister for an amendment of his prospecting licence to include such mineral.

(2) An application for the amendment of a prospecting licence under subsection (1) shall-

- (a) specify the mineral discovered;
- (b) give particulars of the situation and circumstances of the discovery; and
- (c) have appended thereto a proposed programme of prospecting operations in connection therewith.

(3) Subject to the provisions of subsection (4), and provided that the applicant is not in default, the Minister shall permit the amendment of a prospecting licence to include the mineral concerned.

(4) An amendment of a prospecting licence under subsection (3) shall not be permitted if any person other than the applicant is the holder of a prospecting licence, retention licence, mining licence or minerals permit in respect of the mineral concerned or an associated mineral over the area in which it was discovered.

19. Size of prospecting area

(1) Subject to the provisions of this Act, a prospecting licence shall cover such area, not exceeding 1000 km², as is in accordance with the applicant's application.

(2) Subject to the provisions of subsection (4), the prospecting area shall be reduced in size to eliminate therefrom-

- (a) at the end of the initial term of the prospecting licence, not less than half of the initial area;
- (b) at the end of each period of renewal, half of the remaining area, or such lower proportion as the Minister may in any case agree; and
- (c) the area covered by any retention licence or mining licence granted thereon.

(3) The holder of a prospecting licence shall designate, prior to the end of each of the periods referred to in subsection (2), the area or areas to be eliminated from the prospecting area and, in default thereof, the designation shall be made by the Minister.

(4) Where a person holds two or more contiguous prospecting licences covering the same period and the same mineral or minerals the Minister shall, for the purposes of the elimination, under subsection (2), of part of any of the areas thereof, permit the areas covered thereby to be deemed to be one area, the subject of one such prospecting licence.

(5) No compensation shall be payable to the holder of any prospecting licence arising out of reductions in area effected in terms of subsection (2).

20. Rights of holder of prospecting licence

Subject to the provisions of Part VIII, the holder of a prospecting licence may, in the exercise of his rights thereunder, enter upon any land to which his prospecting licence relates together with his servants and agents and may-

- (a) prospect thereon for the mineral to which his prospecting licence relates;
- (b) drill boreholes and make such excavations as may be necessary; and
- (c) erect camps and put up temporary buildings for machinery necessary for prospecting purposes.

21. Obligations of holder of prospecting licence

(1) The holder of a prospecting licence shall-

- (a) commence prospecting operations within three months or such further period as the Minister may allow, of the date of issue of his licence;
- (b) carry on prospecting operations in accordance with the programme of prospecting operations;
- (c) notify the Minister of the discovery of the mineral to which his prospecting licence relates within a period of 30 days of such discovery;
- (d) notify the Minister of the discovery of any mineral deposit of possible economic value within a period of 30 days of such discovery;
- (e) backfill or otherwise make safe any excavation made during the course of his prospecting operations, to the reasonable satisfaction of the Director of Geological Survey;
- (f) permanently preserve or otherwise make safe any borehole in the manner directed by the Director of Geological Survey and surrender to Government without compensation all such boreholes and any water rights in respect thereof on termination;
- (g) unless the Director of Geological Survey otherwise stipulates, remove, within 60 days of the expiry or termination of his prospecting licence, any camp, temporary buildings or machinery erected or installed by him, and repair or otherwise make good any damage to the surface of the ground occasioned by such removal, to the reasonable satisfaction of the Director of Geological Survey;
- (h) subject to the conditions of his prospecting licence and the provisions of section 22, expend on prospecting, in accordance with his prospecting programme, not less than such amount as may be specified in his prospecting licence; and
- (i) submit to the Director of Geological Survey, at least quarterly, reports containing the information required under the licence and the Act both in digital and analogue form.

(2) The holder of a prospecting licence shall submit to the Director of Geological Survey not later than three months after the end of each year of the licence, an audited statement of expenditure directly incurred under the licence and any moneys required to be spent under the provisions of subsection (1)(h) and which are not so spent shall be a debt due to Government recoverable in a court of competent jurisdiction.

(3) The holder of a prospecting licence shall keep full and accurate records of his prospecting operations which shall show-

- (a) boreholes drilled;
- (b) strata penetrated, with detailed logs of such strata;
- (c) minerals discovered;
- (d) the results of any geochemical or geophysical analysis;
- (e) the result of any analysis or identification of minerals removed under section 24;
- (f) the geological interpretation of the records maintained under paragraphs (a) to (e) inclusive;
- (g) the number of persons employed;
- (h) any other prospecting work not listed above;

and shall supply, at least once in every three months, copies of such records to the Director of

Geological Survey.

(4) Any person who fails to keep any record or information required to be kept under subsection (3) or who fails to supply any record to the Director of Geological Survey or who supplies any false or misleading record or information shall be guilty of an offence.

22. Amendment of programme of prospecting operations

(1) The holder of a prospecting licence may, from time to time, notify the Minister of amendments he wishes to make to his programme of prospecting operations and such amendments shall, unless the Minister rejects the same within two months after being so notified, have effect after such period.

(2) The Minister may, on application being made to him by the holder of a prospecting licence, limit or suspend the obligation to carry on prospecting as required by section 21(1)(b), or to expend moneys as required by section 21(1)(h).

23. Transfer of prospecting licence

(1) Subject to this section, a prospecting licence or any interest therein or any controlling interest in the holder thereof may be transferred to any other person provided that the Minister is notified not less than 30 days before the intended transfer.

(2) In such notification, the applicant shall give to the Minister such details of the transferee as would be required in the case of an application for a prospecting licence.

(3) Where the Minister is satisfied that the transferee is not disqualified under any provision of this Act from holding a prospecting licence, he shall notify the applicant of his approval of the transfer of the prospecting licence or an interest therein.

(4) Upon the transfer of a prospecting licence, the transferee shall assume and be responsible for all rights, liabilities and duties of the transferor under the prospecting licence.

24. Removal and disposal of minerals

The holder of a prospecting licence shall not, without the written permission of the Minister, which permission shall not be unreasonably withheld, and subject to such reasonable conditions as the Minister may determine, remove any mineral from a prospecting area except for the purpose of having such mineral analysed, valued, or tested in Botswana.

PART V

Retention Licences (ss 25-36)

25. Who may apply for a retention licence

(1) The holder of a prospecting licence may, by submitting to the Minister an application as set out in Form III of the First Schedule, apply for a retention licence in relation to an area and a mineral covered by his licence.

(2) An application made under subsection (1) shall be made not less than three months prior to the expiry of the prospecting licence concerned.

26. Other holders to be notified of application

Upon receipt of application for a retention licence, the Director of Mines shall notify a holder of any other prospecting licence over the area that such an application has been made.

27. Grounds to be considered in application for a retention licence

(1) The Minister shall grant a retention licence if-

- (a) the applicant has carried out a feasibility study in respect of the deposit to which the application relates in accordance with good industry practice and the study has established that the deposit cannot be mined on a profitable basis at the time of the application;
- (b) the approved prospecting programme in respect of the area applied for has been completed; and
- (c) the applicant is not in default.

(2) Before rejecting an application for a retention licence under subsection (1)(a), the Minister shall give the applicant opportunity to make satisfactory amendments to the proposed mining programme submitted in the feasibility study.

(3) Before rejecting an application for a retention licence under subsection (1)(c), the Minister shall give notice of the default to the applicant and shall call upon the applicant to remedy such default within three months of such notification.

(4) A retention licence shall not be granted to the holder of a prospecting licence in respect of an area larger than that which would be required, having regard to the deposit to which the application relates, to carry on mining operations.

28. Notification of grant or refusal

The Minister shall cause the applicant to be notified in writing of his decision on the application and, if the retention licence is refused, the Minister shall give reasons for such refusal.

29. Form of retention licence

A retention licence, granted in accordance with section 27, shall be in Form IV of the First Schedule.

30. Duration and renewal of a retention licence

(1) Subject to the provisions of this Act, a retention licence shall be valid for such period as the applicant has applied for, which period shall not exceed 3 years.

(2) A retention licence may be renewed once only, for a period not exceeding 3 years.

(3) Subject to subsection (2) above, the holder of a retention licence may apply to the Minister for the renewal of his licence at any time not later than three months before the expiry of the licence, and provided that he has properly complied with section 32 and the deposit cannot be mined on a profitable basis, the Minister shall grant renewal.

31. Rights conferred by a retention licence

Subject to the provisions of this Act, any other written law and the terms and conditions of his licence, the holder of a retention licence shall be entitled-

- (a) to retain the retention area to which the retention licence relates, for future mining operations;
- (b) to carry on prospecting operations in the retention area in order to determine from time to time the prospects of mining any mineral to which the retention licence relates on a profitable basis;
- (c) to remove any mineral or sample of a mineral for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations referred to in paragraph (b) to any other place within Botswana or, with the permission of the Director of Mines, outside Botswana; and
- (d) to carry on, in order to determine, from time to time, the prospect of mining any mineral to which the licence relates, on a profitable basis, such other investigations and operations, including the erection of necessary equipment, plant and buildings, in the retention area as may be reasonably necessary for, or in connection with, any future mining operations or any prospecting operations contemplated in paragraph (b).

32. Obligations of holder of a retention licence

(1) The holder of a retention licence shall-

- (a) demarcate and keep demarcated the retention area in the prescribed manner;
- (b) obtain the consent of the Director of Mines to any amendment of his intended work programme;
- (c) unless the Director of Mines otherwise stipulates-
 - (i) back fill or otherwise make safe excavations made during the course of his prospecting operations to the satisfaction of the Director of Mines;
 - (ii) permanently preserve or otherwise make safe any borehole in the manner directed by the Director of Geological Survey and Director of Mines; and
 - (iii) remove, within two months of the expiry of his licence, any camp, equipment, plant or building erected by him in the retention area, and repair or otherwise make good any damage to the surface area of the grant occasioned by such removal, to the

satisfaction of the Director of Mines.

(2) The holder of a retention licence shall furnish to the Director of Geological Survey and to the Director of Mines a quarterly report covering all matters under section 31(b),(c) and (d).

(3) The holder of a retention licence shall-

- (a) furnish to the Minister by submitting to the Director of Mines, as soon as they become available-
 - (i) the results of all studies, surveys and tests including but not limited to analytical, metallurgical, mineralogical, and geo-physical work incidental to those prospecting operations;
 - (ii) the interpretation and assessment of such studies, surveys and tests; and
- (b) submit annually to the Director of Mines an updated feasibility study and an audited statement of direct expenditure if any, incurred in the retention area during the year.

33. Surrender of information on expiry

(1) Upon expiry of the first period of a retention licence all geological information relating to that licence and to the prospecting licences which preceded it shall be placed on open file at the Department of Geological Survey.

(2) For the purposes of this section, the expression "geological information" shall include information supplied under section 32(3)(a) but not feasibility studies or proprietary information.

34. Third party access

(1) During any renewal period of a retention licence the Minister may, on notice to the holder, authorise and the holder thereof shall permit third parties to have access to the area for the purpose of collecting samples and data required for the purpose of applying for a mining licence.

(2) Any geological data obtained by such third party by means of such access shall be promptly reported to the Director of Geological Survey.

(3) A representative portion of each core sample so obtained shall be promptly delivered to the Director of Geological Survey.

(4) A person authorized under this section shall carry out his operations in such manner as not to disturb or interfere with the operations or workings of the holder of the retention licence and shall have, in respect of his operations in the retention area, the rights and obligations of the holder of a prospecting licence in terms of sections 20, 21 and 24.

35. Application for mining licence by authorized third party

(1) A person authorized in terms of section 34(1), shall be entitled to apply for a mining licence in respect of the retention area.

(2) In the event that both the holder and the authorized third party make application for a mining licence, the Minister shall consider the applications on merit.

(3) In the event that the Minister grants a licence to the authorized third party, the rights and obligations of the retention licence holder shall be extinguished save for his rights under section 32(1)(c)(iii).

36. Transfer or assignment of a retention licence

(1) No retention licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.

(2) In any application to the Minister for his approval under subsection (1), the applicant shall give such particulars concerning the proposed transferee, assignee or other party concerned as would be required in an application for a mining licence.

(3) The Minister shall grant his approval to the transfer, assignment or other dealing with any retention licence or interest therein provided the transferee is not disqualified under any provision of this Act from holding a retention licence and the Minister is satisfied in accordance with section 27.

(4) For the purposes of this section, " interest" in a retention licence shall mean in the

case of a holder who is a private company, a controlling interest in such holder.

PART VI

Mining Licences (ss 37-51)

37. Who may apply for a mining licence

(1) Subject to the provisions of this Act, the holder of a prospecting licence, retention licence, or a waiver issued under subsection (3) may apply for a mining licence for an area in respect of which the waiver has been issued, or for an area within his prospecting area or retention area, in respect of the mineral covered by such prospecting licence, retention licence or waiver, and in the case of a prospecting licence or a retention licence, the issue of a mining licence shall have the effect of reducing the prospecting area or retention area, as the case may be, by the area in respect of which the mining licence is granted.

(2) An application made under subsection (1) shall be made not less than three months prior to the expiry of the prospecting licence or retention licence.

(3) Where the Minister is satisfied that the area over which a mining licence is required has been sufficiently prospected and that no other person has exclusive rights over that area, he may waive the requirements of subsection (1), provided that where a waiver is granted in respect of an area over which a retention licence is current, the Minister shall notify the holder of the retention licence of the granting of such waiver.

(4) Notwithstanding the provisions of subsection (1), an application for a mining licence may only be made by a company incorporated under the Companies Act, which intends to carry on the sole business of mining under the mining licence applied for.

(5) For the purposes of subsection (1), the expression "holder of a prospecting or retention licence" shall include a company formed between such holder and any person or persons invited by such holder for the purposes set out in subsection (4) above.

38. Application for a mining licence

A person wishing to obtain a mining licence shall apply to the Minister by submitting an application in Form V of the First Schedule.

39. Grant of a mining licence

(1) The Minister shall grant a mining licence if satisfied that-

- (a) the proposed programme of mining operations will ensure the most efficient and beneficial use of the mineral resources in the proposed mining area;
- (b) the proposed mining area is not the same as nor does it overlap an existing mining area or retention area unless the holder of that area consents to the grant of a mining licence, or in the case of a retention licence, has failed to make application in terms of section 35(1);
- (c) the proposed mining area extends to cover only that area reasonably required for surface mining and treatment facilities and also to cover the proved, indicated and inferred reserves;
- (d) the applicant has or has secured access to adequate financial resources, technical competence and experience to carry on effective mining operations;
- (e) the proposed financing plan submitted as part of the feasibility study is in accordance with good financial practice, and provides for a debt to equity ratio of no more than 3:1 unless the Minister otherwise agrees;
- (f) the parent company guarantee in the prescribed form has been furnished;
- (g) the applicant is not in default, and
- (h) in the case of an application to mine diamonds, agreement has been reached following a negotiation under section 51.

- (2) The Minister shall not reject an application on any of the grounds referred to in-subsection (1)(a) or (e), unless the applicant has been so notified and has failed to propose reasonable amendments satisfactory to the Minister to his proposed programme of mining operations or financing plan within three months of such

notification;

- (b) subsection (1)(g), unless the applicant has been given details of the default and has failed to remedy the same within three months of such notification.

(3) The Minister may cause such investigations to be made or such negotiations or consultations to be carried on as he may deem necessary to enable him to assess whether or not the criteria in subsection (1) has been satisfied.

(4) In the case of competing applications for a mining licence over the same or overlapping areas, the Minister shall grant a licence to the applicant whose programme will make more beneficial use of the mineral resources of the area.

40. Government investment

(1) Upon the issue of a mining licence, the Government shall have the option of acquiring up to 15% working interest participation in the proposed mine in the following manner-

- (a) upon its exercise of its option Government shall be issued a single P1.00 special share at par, which shall carry the right to appoint up to two directors, with alternates, and to receive all dividends or other distributions in respect of its working interest percentage; and
- (b) government shall be obliged in the same manner as other share holders to contribute its working interest percentage of-
 - (i) all audited arms-length expenditure incurred by the company to which the licence was issued that is directly attributable to the acquisition of the licence, including relevant prospecting expenditure; and
 - (ii) all expenditure on the mine incurred subsequent to the issue of the mining licence.

(2) Government shall on issuing the licence inform the applicant as to whether or not it is exercising its option and of the working interest percentage it wishes to take.

(3) The provisions of this section shall not apply to a licence to mine diamonds, where the extent and terms of Government participation shall be agreed under section 51.

41. Form and content of mining licence

A mining licence shall be in Form VI of the First Schedule, save that a licence to mine diamonds shall have annexed to it a copy of the agreement reached under section 51.

42. Duration and renewal of mining licence

(1) Subject to the provisions of this Act, a mining licence shall be valid for such period, not exceeding 25 years, as is reasonably required to carry out the mining programme.

(2) The holder of a mining licence may apply to the Minister for the renewal of his licence at any time not later than one year before the expiry of such licence.

(3) An application for renewal of a mining licence shall be in Form V of the First Schedule.

(4) The Minister shall grant an application for renewal if satisfied that-

- (a) the applicant is not in default;
- (b) development of the mining area has proceeded with reasonable diligence;
- (c) the proposed programme of mining operations will ensure the most efficient and beneficial use of the mineral resources in the mining area; and
- (d) in the case of an application for renewal of a licence to mine diamonds, agreement has been reached following negotiation under section 51.

(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 of the default and has failed to remedy the same within three months of such notification;
- (b) subsection (4)(b), unless the applicant has been given reasonable opportunity to make written representations thereon to the Minister; or
- (c) subsection (4)(c), unless the applicant has been so notified and has failed to propose amendments to his proposed programme of mining operations satisfactory to the Minister within three months of such notification.

(6) Subject to the provisions of this Act, the period of renewal of a mining licence shall be such period, not exceeding 25 years, as is reasonably required to carry out the mining programme.

(7) On the renewal of a mining licence the Minister shall append thereto the programme of mining operations to be carried out in the period of renewal.

43. Amendment of programme of mining operations

The holder of a mining licence may, from time to time, notify the Minister of amendments he wishes to make to his programme of mining operations and such amendments shall, unless the Minister rejects them within three months after being so notified, have effect after such period.

44. Rights conferred by mining licence

(1) Subject to the provisions of this Act or any other written law the holder of a mining licence may, in the exercise of his rights thereunder, enter upon any land to which his mining licence relates with his servants and agents and may-

- (a) take all reasonable measures on or under the surface to mine the mineral to which his mining licence relates;
- (b) erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining minerals recovered by him during mining operations;
- (c) dispose of any mineral product recovered;
- (d) prospect within his mining area for the mineral for which he holds a mining licence and for any other mineral; and
- (e) stack or dump any mineral or waste product in a manner approved by the Director of Mines.

(2) If, in the course of exercising his rights thereunder, the holder of a mining licence discovers any further deposits of the mineral for which he holds a mining licence or any mineral not included in such licence, he shall, within 30 days after such discovery, notify the Minister thereof, giving particulars of the mineral discovered and the site and circumstances of the discovery, and may, subject to section 51, apply to the Minister to have the mining of such deposit or such mineral included in his mining licence, giving in his application a proposed programme of mining operations in respect of that mineral.

(3) Subject to section 51, if the Minister is satisfied with the proposed programme of mining operations submitted under subsection (2), he shall approve such application and shall amend the mining licence accordingly.

(4) The Minister shall not reject an application under subsection (3) above unless he shall first give the applicant opportunity to amend the programme in a manner satisfactory to the Minister.

(5) Subject to section 51 and subsection (7) below, the holder of a mining licence may apply to the Minister to have his mining area enlarged and the Minister shall, subject to the provisions of subsection (6), approve such application if he is satisfied that such approval will ensure the most efficient and beneficial use of the mineral resources of Botswana.

(6) A mining area shall not be enlarged so as to include any area which is not contiguous to the mining licence.

(7) The applicant for enlargement of a mining licence area shall be the holder of a prospecting licence, a retention licence, or a waiver in respect of the area sought to be added to the mining area.

45. Obligations of holder of mining licence

(1) Subject to the provisions of this Act, the holder of a mining licence shall-

- (a) commence production on or before the date referred to in the programme of mining operations as the date by which he intends to work for profit;
- (b) develop and mine the mineral covered by his mining licence in accordance with the

programme of mining operations as adjusted from time to time in accordance with good mining and environmental practice;

- (c) demarcate and keep demarcated the mining area in such manner as may be prescribed and, within three months of the date referred to in paragraph (a), submit to the Minister a diagram of the mining area;
- (d) keep and maintain an address in Botswana, full particulars of which shall be registered with the Minister, to which all communications and notices may be addressed; and
- (e) notify the Minister as soon as he begins to work his mining area for profit.

(2) The holder of a mining licence shall-

- (a) maintain at the address kept in accordance with subsection (1)(d)-
 - (i) complete and accurate technical records of his operations in the mining area;
 - (ii) copies of all maps and geological reports, including interpretations, mineral analyses, aerial photographs, core logs, analyses and test results obtained and compiled by the holder in respect of the mining area;
 - (iii) accurate and systematic financial records of his operations in the mining area and such other books of accounts and financial records as the Minister may require; if such holder is engaged in any other activity not connected with his operations under the mining licence, he shall maintain separate books of accounts of his operations under such licence;
- (b) permit an authorized officer at any time to inspect the books and records maintained in pursuance of paragraph (a) and shall deliver to the Minister, without charge, copies of any part of such books and records as the Minister may from time to time require;
- (c) submit to the Minister such reports, records and other information as the Minister may from time to time reasonably require concerning the conduct of his operations in the mining area; and
- (d) furnish the Minister with a copy of his annual audited financial statements within six months of the end of each financial year.

46. Wasteful mining and treatment practices

(1) No holder of a mining licence shall engage in wasteful mining or treatment practices or conduct his operations otherwise than in accordance with good mining practice.

(2) If the Minister considers that the holder of a mining licence is in breach of subsection (1), he may notify him accordingly and require him to show cause why he should not discontinue such breach.

(3) If, within the time specified in any notice issued under subsection (2), the holder of a mining licence fails to discontinue the breach or to satisfy the Minister that he is not in breach, the Minister may direct the holder to discontinue the breach and the holder shall comply with such direction.

47. Suspension of production

(1) The holder of a mining licence shall notify the Minister-

- (a) one year in advance, if he proposes to cease production from his mine;
- (b) six months in advance, if he proposes to suspend production from his mine;
- (c) three months in advance, if he proposes to curtail such production, and shall, in all cases, give reasons for such cessation, suspension or curtailment.

(2) If, for reasons beyond his control, the holder of a mining licence terminates, suspends or curtails production from his mine without giving notice in accordance with subsection (1), he shall, within 14 days of such termination, suspension or curtailment, notify the Minister thereof.

(3) On receiving notification under subsection (1) or if he otherwise becomes aware of any cessation, suspension or curtailment of production, the Minister may cause the matter to be investigated and may either-

- (a) give his approval to such cessation, suspension or curtailment; or

- (b) if this is in accordance with good mining practice, direct the holder of the mining licence to continue or resume full production at the mine.

48. Export of radioactive minerals

(1) No person shall export any radioactive mineral except under and in accordance with the terms and conditions of a permit granted by the Minister.

(2) The grant of a permit under subsection (1) shall be at the discretion of the Minister exercised reasonably.

(3) A permit issued under subsection (1) shall be in such form and shall be subject to the payment of such fee and such reasonable terms and conditions as the Minister may determine.

49. Trading in mining areas

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

50. Transfer or assignment of mining licence

(1) No mining licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.

(2) In any application to the Minister for his approval under subsection (1), the applicant shall give such particulars concerning the proposed transferee, assignee, or other party concerned as would be required in an application for a mining licence.

(3) Subject to section 51, the Minister shall grant his approval to the transfer, assignment, encumbrance or other dealing with any mining licence or interest therein provided the transferee is not disqualified under any provision of this Act from holding a mining licence and the Minister is satisfied in accordance with section 39.

(4) For the purposes of this section, "interest" in a mining licence shall mean in the case of a holder who is a private company, a controlling interest in such holder.

51. Negotiations over mining licence for diamonds

(1) Notwithstanding the provisions of this Part, any application for the issue, renewal, transfer or amendment of a licence to mine diamonds shall initiate a negotiating process, in good faith, between Government and the applicant covering all technical, financial and commercial aspects of the proposed project including Government participation.

(2) Should the negotiations not lead to agreement within six months or such extended period as the Minister may allow, the application shall fail.

(3) Upon successful conclusion of the negotiation under subsection (1), the Minister shall issue a licence reflecting the terms and conditions agreed.

PART VII

Minerals Permits (ss 52-59)

52. Application for a minerals permit

(1) Subject to the provisions of this Part, a person wishing to conduct small scale mining operations may apply for a minerals permit to conduct such operations for any mineral other than diamonds over an area not exceeding 0.5 km² per permit.

(2) A person wishing to obtain a minerals permit shall apply to the Minister by completing Form VII of the First Schedule.

(3) An application for a minerals permit relating to-

- (a) any area in respect of which consent is required under any written law shall be accompanied by evidence that such consent has been obtained;
- (b) land of which the applicant is not the owner shall be accompanied by evidence that the consent of the owner, or, in the case of tribal territory, the consent of the appropriate

- (c) land board, has been obtained; or
- (c) a prospecting area, retention area or mining area or part thereof shall be accompanied by evidence that the consent of the holder of the prospecting licence, retention licence or mining licence has been given, unless such holder will not be prejudiced by the issue of a minerals permit.
- (4) The Minister shall grant a minerals permit if satisfied that-
 - (a) the proposed programme of working will ensure the efficient and beneficial use of the mineral resource;
 - (b) consent has been obtained-
 - (i) under any written law where such consent is required in respect of the area applied for;
 - (ii) from the owner of the area applied for; and
 - (iii) from the holder of any existing mineral concession over the land applied for.

(5) Notwithstanding subsection 4(b)(iii) above, the Minister may grant a minerals permit without the consent of the holder of an existing mineral concession over the area applied for if such holder will not be prejudiced by the grant of a permit, and the holder has been given a reasonable opportunity to make representations to the Minister as to why a permit should be refused.

(6) A minerals permit shall be in Form VIII of the First Schedule.

(7) No minerals permit shall be granted for the mining of diamonds.

53. Permits for industrial minerals

(1) Subject to the provisions of subsection (2), a minerals permit to exploit industrial minerals shall not be granted to a person who is not a citizen of Botswana.

(2) The Minister may exempt any person from the provisions of subsection (1) if he is satisfied that-

- (a) it is in the public interest that a minerals permit to exploit industrial minerals should be granted to such person; or
- (b) the permit applied for is in respect of industrial minerals required for specific works and the applicant has given an undertaking that the minerals concerned will not be sold or otherwise disposed of for profit.

(3) In this section "citizen of Botswana" means-

- (a) in relation to an individual, an individual who is a citizen of Botswana;
- (b) in relation to a partnership or association of individuals, a partnership or association which is composed exclusively of individuals who are citizens of Botswana; and
- (c) in relation to a corporate body, a corporate body which is incorporated under the Companies Act-
 - (i) which is certified by the Minister to be controlled by the Government, or
 - (ii) whose directors and beneficial shareholders are all citizens of Botswana.

54. Demarcation of area covered by a minerals permit

The holder of a minerals permit shall, within three months of the issue thereof, demarcate the area covered by such permit in such manner as may be prescribed.

55. Duration, renewal and termination of a minerals permit

(1) Subject to the provisions of subsection (2), a minerals permit shall be valid for such period, not exceeding five years, as the Minister may determine and may, on application made to the Minister, be renewed for further periods not exceeding five years at a time.

(2) Without prejudice to section 76, the Minister may terminate a minerals permit issued to exploit industrial minerals if he is satisfied that the holder thereof has ceased to be a citizen of Botswana or has entered into an arrangement with a person who is not a citizen of Botswana, as defined in section 53(3), which arrangement has the effect of transferring to that person any interest in such permit.

56. Rights under a minerals permit

The holder of a minerals permit may, subject to the provisions of this Act and to any other written law, enter upon the area covered by such permit with his servants and agents and-

- (a) mine the minerals to which his permit relates;
- (b) dispose of the minerals to which his permit relates; and
- (c) erect such temporary structures, other than residential buildings, as may be necessary for the purposes of mining.

57. Duties of holder of a minerals permit

The holder of a minerals permit shall-

- (a) notify the Minister of any change in his address;
- (b) mine the mineral to which his permit relates within the area covered by his permit in conformity with good mining and environmental practice (as may be prescribed);
- (c) submit a report to the Minister each year during the currency of his permit and any renewal thereof giving-
 - (i) the mineral production from the area covered by his permit in the preceding year and the value of such production;
 - (ii) the average number of employees during the preceding year; and
 - (iii) a brief description of his plant, vehicles and equipment; and
- (d) at the termination of his permit, clear and make safe the area covered by his permit, to the satisfaction of the Director of Mines.

58. Special rights with regard to industrial minerals

(1) Nothing in this Act shall prevent-

- (a) a local authority on land owned by it;
- (b) the owner or lawful occupier of any land owned or occupied by him; or
- (c) the holder of a mineral concession on land the subject of such concession,

from prospecting for and mining industrial minerals to be used solely for building, road making or agricultural purposes on such land, so long as the exercise of such powers is not inconsistent with or detrimental to the rights of any other mineral concession holder.

(2) For the purposes of subsection (1), a Land Board established under the Tribal Land Act shall be deemed to be a local authority.

(3) Any person exercising rights under this section shall do so in such manner as to minimize environmental damage and shall rehabilitate within a reasonable time, the site of any such prospecting or mining to the reasonable satisfaction of the Director of Mines.

59. Transfer or assignment of minerals permit

(1) No minerals permit or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.

(2) In any application to the Minister for his approval under subsection (1), the applicant shall give such particulars concerning the proposed transferee, assignee, or other party concerned as would be required in an application for a minerals permit.

(3) The Minister shall grant his approval to the transfer, assignment, encumbrance or other dealing with any minerals permit or interest therein provided the transferee is not disqualified under any provision of this Act from holding a minerals permit and the Minister is satisfied in accordance with section 52(4).

(4) For the purposes of this section, "interest" in a minerals permit shall mean in the case of a holder who is a private company, a controlling interest in such holder.

PART VIII

Mineral Concessions and Surface Rights (ss 60-64)

60. Restriction on exercise of rights under a mineral concession

(1) No holder of a mineral concession shall exercise any right thereunder-

- (a) without the written consent of the President, upon-
 - (i) any land dedicated as a place of burial;
 - (ii) any land containing any ancient monument or national monument, as defined in

- the Monuments and Relics Act; or
- (iii) any land set aside or used for the purposes of Government;
- (b) without the written consent of the owner or lawful occupier thereof-
 - (i) within 200 metres of any inhabited, occupied or temporarily unoccupied house or building;
 - (ii) within 50 metres 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) within 100 metres 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 mineral concession to exercise all or any of his rights thereunder on such land, subject to such reasonable conditions as he may impose, including payment of reasonable compensation;

Provided further that a dispute over the level of compensation shall not preclude the exercise of the concession holder's rights while such dispute remains to be settled;

- (c) in a national park, without permission obtained under section 10 of the Wildlife Conservation and National Parks Act;
- (d) upon any land reserved for the purposes of a railway track or within 50 metres of any railway track, without the written consent of the railway administration concerned;
- (e) upon any land within, or within 200 metres of, the boundaries of any township, without the consent of the local authority concerned;
- (f) upon any street, road, highway, public place or aerodrome, without the consent of the Minister or other authority having control thereof;
- (g) upon any land on which industrial minerals are being mined on behalf of Government or a local authority, or by any person holding a permit under Part VII, without the consent of the Minister, such local authority or the holder of such permit, as the case may be; or
- (h) upon land specified by the Minister, by order published in the *Gazette*, to be land upon which prospecting or mining is prohibited or restricted.

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

(3) No person shall exercise any right under a mineral concession upon any land other than unalienated State land unless he has given at least 14 days notice of his intention to do so to the owner or lawful occupier thereof giving in such notice details of the area in which the right is to be exercised and the date of expiry of his permit or licence.

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

(5) No consent applied for under this section shall be unreasonably withheld.

61. Right to graze stock, etc.

(1) The owner or lawful occupier of any land within the area of a mineral concession 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 proper use of such area for prospecting, retention or mining purposes.

(2) In the case of a mining area, a retention area or a minerals permit 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 holder of the mining licence, retention licence or minerals permit, as the case may be, which consent shall not be unreasonably withheld.

(3) The rights conferred by a mineral concession shall be exercised reasonably and so as to affect as little as possible the interests of any owner or lawful occupier of the land on which such rights are exercised consistent with the reasonable and proper conduct of the operations concerned.

(4) No holder of a mineral concession shall create unprotected pits, hazardous waste dumps or other hazards such as to be likely to endanger the stock, crops or other lawful activity of the owner or lawful occupier of the land covered by such mineral concession.

62. Acquisition of exclusive rights by holder of mining or retention licence or minerals permit

(1) The holder of a retention licence, mining licence or minerals permit may, if he requires the exclusive use of the whole or any part of the retention area or mining area or minerals permit area, and shall, if requested by the owner or lawful occupier of any part of such area, obtain a lease thereof or other rights to use the same upon such terms as to the rents to be paid therefor, the duration thereof or the extent or area of the land to which such lease relates as may be agreed between such holder and such owner or lawful occupier, or, failing such agreement, as may be determined by arbitration:

Provided that-

- (i) the holder of a mining licence or such a permit shall not obtain a lease of or other rights over any land specified in paragraphs (a) and (c) to (g) inclusive of section 60(1) except with the consent of the persons specified in such paragraphs;
- (ii) in the case of tribal land, any rents payable under this subsection shall be payable to the Land Board within the area in which the land is situated;
- (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; and
- (iv) no demand made in terms of this subsection shall entitle the owner or lawful occupier to prevent or hinder the exercise by the holder of rights under his concession pending determination of compensation to be paid.

(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 arbitration current in the area in which the mining licence or retention licence or minerals permit is situated for land of a similar nature to the land concerned but without taking into account any enhanced value due to the presence of minerals.

63. Compensation for disturbance of rights, etc.

(1) The holder of a mineral concession shall, on demand being made by the owner or lawful occupier of any land subject to such concession, promptly 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 by such 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 damage:

Provided that-

- (i) payment of rent under the provisions of section 62 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 holder of the mineral concession 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 has occurred has been reduced by reason of such damage, but without taking into account any enhanced value due to the presence of minerals;
 - (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 mineral concession existing at the date of such grant; and
 - (v) no demand made in terms of this subsection shall entitle the owner or lawful occupier to prevent or hinder the exercise by the holder of rights under his concession pending the determination of compensation to be paid.

(2) If the holder of a mineral concession 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.

64. Compulsory acquisition of land

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

(2) Acquisition of land under this section shall be deemed to be for 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 IX

Environmental Obligations (s 65)

65. Rehabilitation, reclamation etc.

(1) The holder of a mineral concession shall, in accordance with the law in force from time to time in Botswana and in accordance with good mining industry practice, conduct his operations in such manner as to preserve in as far as is possible the natural environment, minimize and control waste or undue loss of or damage to natural and biological resources, to prevent and where unavoidable, promptly treat pollution and contamination of the environment and shall take no steps which may unnecessarily or unreasonably restrict or limit further development of the natural resources of the concession area or adjacent areas.

(2) In accordance with good international mining industry standards, the applicant for a mining licence or retention licence or any renewal of either shall prepare and submit a comprehensive Environmental Impact Assessment as part of the Project Feasibility Study Report.

(3) The holder of a mineral concession shall ensure that his concession area is rehabilitated from time to time and ultimately reclaimed in so far as is practicable in a manner acceptable to the Director of Mines.

(4) Without prejudice to the generality of subsection (3) above, during and at the end of operations in any mine, excavation, waste dump or pond, the holder of a mineral concession shall take such measures as are required from time to time to maintain and restore the top soil of affected areas and otherwise to restore the land substantially to the condition in which it was prior to the commencement of operations.

(5) If there is any dispute as to the extent of the measures necessary to comply with the requirements of this section, the holder of a mineral concession may refer the question to arbitration.

(6) In the event that the holder of a mineral concession fails to fulfil his obligation under this section and without prejudice to any other remedy available or other liability the holder may

otherwise incur, the Minister may, after having notified the holder of his default and having given the holder a reasonable period of time to carry out the necessary restorations, carry out the necessary restoration whereupon the cost of such restoration shall be a debt due to Government by the holder and shall be recoverable in a court of competent jurisdiction, provided that the cost of any part of the restoration determined by an arbitrator not to have been necessary in terms of subsection (3) shall be deducted from the sum payable or if paid, refunded from the sum paid.

(7) In the event of an emergency or extraordinary circumstances requiring immediate action, the holder of a mineral concession shall forthwith notify the Director of Mines and shall take all immediate action in accordance with the reasonable directions of the Director of Mines.

(8) For the purpose of this section "emergency or extraordinary circumstances" means a situation or occurrence, whether existing or imminent, resulting from an act of man or nature, which if no prompt remedial action were taken, might result in death, bodily harm or injury to any person, or loss of or damage to capital assets or to any natural or biological resources.

(9) The holder of a mineral concession shall make adequate ongoing financial provision for compliance with his obligations under this section.

PART X

Financial (ss 66-73)

66. Royalties

(1) Subject to the provisions of this Part, the holder of a mineral concession shall be liable to pay royalties to the Government on any mineral obtained by him in the course of the exercise of his rights thereunder at the rates and in the manner prescribed under this section.

(2) The royalties payable shall be the following percentages of gross market value as defined under subsection (3) below-

<u>Mineral Type</u>	<u>Percentage</u>
Precious stones	%
Precious metals	5%
Other minerals or mineral products	%

(3) The term "gross market value" shall for the purposes of calculation of royalties be defined as the sale value receivable at the mine gate in an arms length transaction without discounts, commissions or deductions for the mineral or mineral product on disposal.

(4) Royalty shall be paid on a mineral or mineral product on receipt of each payment or other consideration for such mineral or mineral product, and each royalty payment shall be accompanied by full particulars of the mineral or mineral product sold or disposed of and the terms of payment therefor:

Provided that any disposal for other than monetary consideration or consideration deferred for a period beyond industry practice shall be referred to the Minister for determination of royalty in terms of subsection (5) below.

(5) Where it appears to the Minister that minerals have been disposed of otherwise than in an arms length transaction, the Minister shall determine the royalty payable on the basis of prices ruling in the industry, and the royalty so determined shall be payable on demand:

Provided that the royalty so determined and paid may be varied by court review or arbitration and the sum of any such variation shall thereupon become payable or repayable as the case may be.

(6) For the purposes of this section, the expression "arms length transaction" shall mean a transaction between a willing buyer and willing seller in the open market where the purchase price for the sale is not influenced by any special relationship or other arrangement between the parties to the transaction and is not affected by any non-commercial considerations and specifically excludes any barter, swap, exchange, or transfer price arrangements, restricted or distress transaction which is associated with special financial, commercial or other

considerations.

67. Remission of royalties

(1) The Minister may, in the public interest, remit all or part of any royalty payable on any mineral or mineral product for such period as he may determine.

(2) The Minister may exempt from liability to royalty samples of minerals required for the purpose of assay, analysis or other examination.

68. Deferred payment of royalty

The Minister may, on application being made to him by the holder of a mineral concession, defer payment of any royalty due from such holder for such period and subject to such conditions as he may determine.

69. Prohibition on disposal of minerals

(1) If the holder of a mineral concession fails to pay any royalty due in respect of that concession on or before the due date or any extension thereof, or if the Minister has reason to believe that minerals have 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 mineral concession concerned, prohibit the disposal of any mineral from such area, or from any other area held by such holder under a mineral concession 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 holder of a mineral concession who contravenes or fails to comply with the provisions of an order given under subsection (1) and any person who, knowing of such an order and contrary thereto, receives any mineral from the area concerned, shall be guilty of an offence.

70. Annual charges in respect of prospecting and retention licences

(1) There shall be due and payable to Government by every holder of a prospecting licence or retention licence the non refundable annual charge prescribed in the Second Schedule.

(2) The annual charge payable under the provisions of subsection (1) shall be payable on the issue of a prospecting licence or retention licence and thereafter annually on the anniversary thereof until the termination of such licence.

(3) Where a prospecting licence or retention licence is granted over land in a tribal area, one-half of any moneys received under the provisions of this section shall be appropriated to the Land Board within the area in which the land is situated.

71. Annual charges in respect of mining licences and minerals permits

(1) There shall be paid by the holder of every mining licence or minerals permit an annual charge as prescribed in the Second Schedule.

(2) The annual charge payable under the provisions of subsection (1) shall be payable on the issue of the licence or permit as the case may be and thereafter annually on the anniversary thereof until the termination of such licence or permit.

72. Interest on overdue payments

All overdue payments under this Act shall bear interest at the commercial bank prime lending rate ruling from time to time plus a premium of five percentage points.

73. Security for compliance

The Minister may, from time to time, make reasonable arrangements to secure that the holders of mineral concessions comply with the provisions of this Act, and, without prejudice to the generality of the foregoing, may require or accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

PART XI

Withdrawal of Applications, Surrender and Termination of Mineral Concessions, etc. (ss 74-79)

74. Withdrawal of applications

An applicant for a mineral concession or any renewal thereof may withdraw his

application at any time before such application is approved or rejected by notifying the Minister, in writing, that he withdraws such application.

75. Surrender of area or part thereof covered by mineral concession

(1) Subject to the provisions of section 47 and of any condition in his mineral concession, the holder of a mineral concession may surrender the area covered by his mineral concession or part thereof by-

- (a) giving the Minister not less than three months' notice of his intention to surrender the whole or part of the area concerned;
- (b) complying with any reasonable requirement of the Director of Geological Survey or the Director of Mines, as to the rehabilitation and reclamation of the concession area.

(2) If the application for surrender is in respect of part only of the area covered by the mineral concession, the holder thereof shall-

- (a) if it relates to a mining area, provide a diagram of the area to be surrendered;
- (b) in the case of any other mineral concession, provide a reliable plan of the area to be surrendered;
- (c) give the results of prospecting carried out; and
- (d) demarcate the remaining area in the prescribed manner.

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

(4) Following compliance with subsection (1)(b) by the holder, the Minister shall-

- (a) if the surrender is in relation to the whole area covered by a mineral concession, cancel such concession; or
- (b) if the surrender is in respect of part only of the area covered by a mineral concession, amend the concession accordingly.

76. Minister's power to suspend or cancel a mineral concession

(1) Subject to the provisions of this section, the Minister may suspend or cancel a mineral concession if the holder thereof-

- (a) fails to make any of the payments required by or under this Act on the due date;
- (b) contravenes any provision of this Act or the conditions of his mineral concession or the provisions of any other written law relating to mines and minerals;
- (c) dies, becomes of unsound mind, becomes insolvent, commits any act of bankruptcy, enters into any agreement or scheme of composition with his creditors, 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 its reconstruction or amalgamation.
- (d) makes any statement to the Government in connection with his mineral concession which he knows or ought to have known was false; or
- (e) for any reason is or becomes ineligible to hold a mineral concession under the provisions of section 6.

(2) Before suspending or cancelling a mineral concession under paragraphs (a) and (b) of subsection (1), the Minister shall give the holder thereof notice in writing specifying the particular failure or contravention and calling upon the holder to remedy the same within such period, being not less than 30 days, as may be specified in such notice.

(3) If the holder of a mineral concession fails to remedy any failure or contravention specified in paragraphs (a) and (b) of subsection (1) within the period specified in a notice issued under subsection (2), the Minister may, by notice to the holder thereof, suspend or cancel the mineral concession forthwith.

(4) On cancellation of a mineral concession under the provisions of this section, the rights of the holder thereof shall be extinguished but without prejudice to any liabilities or obligations incurred in relation thereto prior to the date of cancellation.

77. Assets on termination

(1) Where the holder of a mineral concession intends to cease operations either during the period of or on termination of his licence, he shall, not less than three months or such other period as the Director of Mines may allow before such cessation or termination, furnish to the Director of Mines, a full register of assets showing those assets which he intends to remove and those which he intends to leave in the concession area, and shall further notify the Director of Mines of any potentially hazardous substances, erections or excavations in the concession area.

(2) On receipt of a notice in terms of subsection (1) above, the Director of Mines shall, if he deems it necessary-

- (a) certify that specified items of fixed machinery are necessary for the care and maintenance of the concession area and such items and machinery shall not be removed;
- (b) require that specified buildings and other items of fixed machinery shall be removed; or
- (c) require that potentially hazardous substances, erections and excavations be removed or made safe in such manner as he may direct.

(3) If removal of specified assets which the holder has indicated that he wishes to remove is prohibited under subsection 2(a) above, the Government shall pay reasonable compensation to the holder for such assets and any person who acquires a mineral concession over the area concerned shall reimburse the Government the sum equal to the compensation so paid.

(4) Upon cessation of operations by the holder of a mineral concession in terms of this clause, the mining area shall revert to the owner thereof provided that should the Director of Mines determine that the area should be retained, it shall be so retained by the Government subject to payment of fair compensation to the owner for such right of retention.

(5) Any fresh water dam and the waters impounded thereby shall be left intact on cessation of operations in or termination of a mineral concession.

78. Delivery of documents on termination

(1) Upon termination of any mineral concession the holder thereof shall deliver to the Minister-

- (a) all records which the holder is obliged under the provisions of this Act to maintain; and
- (b) all plans or maps of the area covered by the mineral concession prepared by the holder or at his instructions.

(2) Any person who fails to deliver any document required to be delivered under the provisions of subsection (1) within 14 days of being called upon to do so by the Minister shall be guilty of an offence.

79. Pending applications

Where the holder of-

- (a) a prospecting licence has made application for a renewal thereof or for either a retention licence or a mining licence over part of the area covered by his prospecting licence;
 - (b) a retention licence has made application for a renewal thereof or for a mining licence; or
 - (c) a mining licence or a minerals permit has made application for a renewal thereof,
- the Minister may extend the period of validity of such prospecting licence, retention licence, mining licence or minerals permit, as the case may be, pending his decision on the application.

PART XII

Regulations (s 80)

80. Regulations

(1) The Minister may make regulations for the better carrying into effect of this Act and, in particular and without prejudice to the generality of the foregoing, regulations may provide for the following matters or purposes-

- (a) prescribing anything which in terms of this Act is to or may be prescribed;
- (b) for making of returns of minerals won and for the valuation of such minerals, and the sampling, weighing and testing of any mineral;
- (c) the shape of the areas over which mineral concessions may be granted;
- (d) the manner in which areas and boundaries shall be marked, beacons and surveyed;
- (e) the gathering of fuel wood and the cutting and use of timber for the purposes of carrying on prospecting and mining operations;
- (f) the returns to be rendered and the nature of the accounts, books and plans to be kept by the holders of mineral concessions;
- (g) the fees to be paid in respect of any matter or thing done under this Act; and
- (h) the protection of the environment.

(2) Regulations made under this section may provide a penalty for the contravention thereof in any amount not exceeding P5000 or to imprisonment for a term not exceeding six months, or to both.

(3) The Minister may by notice amend or replace any schedule to this Act.

PART XIII

Offences and Penalties (ss 81-84)

81. Imposition of penalty on holder of mineral concession

(1) If the Minister considers that the holder of a mineral concession is in breach of any of the provisions of this Act, or of any of the terms or conditions of such concession, he may, in lieu of proceeding under any other provision of this Act, notify the holder accordingly and require him to show cause, in writing, within such reasonable time as the Minister shall specify in the notification, why he should not incur a penalty for such breach.

(2) If, within the time specified in a notification, the holder of a mineral concession fails to satisfy the Minister that-

- (a) the alleged breach had not occurred;
- (b) the holder had taken all appropriate precautions, due care and reasonable alternative measures with the object of avoiding such breach; or
- (c) there was a reasonable excuse for the breach;

the Minister may order that there be imposed on the holder a penalty in such sum, not exceeding P50 000, as the Minister may deem appropriate having regard to the nature of the breach, its seriousness and the other occasions, if any, upon which the holder has been in breach of this Act or of the terms or conditions of his mineral concession.

(3) If the Minister makes an order under subsection (2), the penalty imposed may be recovered in any court of competent jurisdiction.

82. Offences

Any person who-

- (a) fails, neglects or refuses to allow or provide all reasonable facilities and assistance to an authorized officer;
- (b) fails, neglects or refuses to comply with any direction given under section 8;
- (c) prospects, retains a mineral deposit or mines otherwise than in accordance with the provisions of this Act;
- (d) fails to notify the Minister in pursuance of the provisions of section 21(1)(c) or (d), 32(3) or 45(1)(e);
- (e) carries on business in contravention of section 49(1) or who erects any building or other structure in contravention of the provisions of section 49(2);
- (f) obstructs, hinders or delays an authorized officer or specially authorised officer in the performance of his duties under this Act;
- (g) in making application for a mineral concession or any renewal thereof, knowingly makes any statement which is false or misleading in any material particular or makes any material omission;

- (h) in any report, return or affidavit submitted in pursuance of the provisions of this Act, knowingly includes any information which is false or misleading in any material particular or makes any material omission;
- (i) removes or fails to remove any buildings, fixed machinery or other movable property contrary to section 77;
- (j) removes or disposes of any mineral contrary to the provisions of section 24;
- (k) exports any radioactive mineral in contravention of section 48(1) or fails to comply with the terms or conditions of a permit issued under that section;
- (l) causes unlawful environmental damage contrary to section 65 or fails to rehabilitate an extraction site, or fails to deal with potentially hazardous substances, erections or excavations in accordance with directions given under subsection 77(2)(b).
- (m) places or deposits, or is accessory to the placing or depositing of, any mineral in any place with the intention to mislead any other person as to the mineral possibilities of such place;
- (n) mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of such ore with the intention to cheat, deceive or defraud; or
- (o) being engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals, keeps or uses any false or fraudulent scales or weights for weighing such ores, metals or minerals, or uses any false or fraudulent assay scales or weights or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent,

shall be guilty of an offence.

83. Penalties

(1) Any person guilty of an offence under section 82(a) to (e) inclusive or an offence for which no penalty is prescribed under this Act shall be liable, on first conviction, to a fine not exceeding P1 000 or to imprisonment for a term not exceeding three months, or to both.

(2) Any person guilty of an offence under section 82(f) to (i) inclusive shall be liable, on first conviction to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

(3) Any person guilty of an offence under section 82(j) to (o) inclusive shall be liable, on first conviction to a fine not exceeding P100 000 or to imprisonment for a term not exceeding 5 years, or to both.

(4) On a second or subsequent conviction for an offence under this Act, a court may impose a penalty which does not exceed double the penalty referred to in subsections (1), (2) and (3).

84. Summary imposition of penalties

(1) An authorized officer or a specially authorised officer may, if satisfied that any person is guilty of an offence described in section 82, summarily demand from such person the payment of a fine not exceeding P200 in respect of such offence.

(2) Any person from whom payment of a fine has been demanded under the provisions of subsection (1) shall have the right to elect to admit liability and pay the fine, or to dispute liability, and such person shall be informed of such rights at the time by the person making the demand.

(3) The payment forthwith or within such time as the person making the demand may specify of a fine shall operate as a bar to any further proceedings against the person making such payment in respect of the offence concerned.

(4) An authorized officer or specially authorized officer receiving payment of a fine shall cause a receipt to be given in such form as may be prescribed, and shall cause the fine to be paid into the general revenues of the Republic.

(5) An election made under subsection (2) shall be irrevocable.

PART XIV
Records and Information (ss 85-87)

85. Records to be maintained by Minister

(1) The Minister shall maintain records of all mineral concessions issued under this Act in sufficient detail as to show-

- (a) the name of the holder of the mineral concession;
- (b) the area subject to the mineral concession;
- (c) the date of issue and duration of the mineral concession; and
- (d) the mineral for which the concession is granted.

(2) Records maintained under subsection (1) shall be open to inspection by members of the public during normal Government office hours, and members of the public shall be permitted to take copies thereof.

86. Certain records supplied to Minister to be confidential

Records supplied under section 21(3), 32(3), 45(2) or 57(c) shall so long as the person supplying the same or his successor-in-title retains a prospecting licence, retention licence, mining licence or minerals permit over the area to which the records relate, be treated as confidential and shall not be divulged without the consent of the person supplying the same or his successor-in-title:

Provided that nothing in this section shall prohibit the disclosure of any confidential information-

- (i) where such disclosure is necessary or required for the purposes of this Act;
- (ii) for the purposes of a prosecution under this Act or any other law;
- (iii) to any person being a consultant to or officer employed by the Government who is approved by the Minister to receive such confidential information:

Provided further that subject to items (i), (ii) and (iii) all proprietary information supplied to the Minister or any officer under this Act shall be kept confidential.

87. Savings

(1) All subsidiary legislation made under the repealed Act [the Mines and Minerals Act], and in force immediately prior to the coming into operation of this Act shall, in so far as such subsidiary legislation may not be inconsistent with the provisions of this Act, continue in force as if made under this Act.

(2) Nothing in this Act shall affect the continued validity of any title to, interest in or right over, any minerals, of whatsoever nature, subsisting immediately prior to the coming into operation of this Act (hereinafter called "existing right"):

Provided that a state grant of a mining lease issued and in force immediately before the commencement of this Act shall be deemed for the purposes of this Act to be a mining licence issued under the provisions of Part VI:

Provided further that in the event of any conflict between the terms and conditions of any existing right and the provisions of this Act, the terms and conditions of such existing right shall continue to be valid and enforceable notwithstanding the provisions of this Act.

FIRST SCHEDULE

FORMS

(Section 13)

Form I

PROSPECTING LICENCE APPLICATION FORM (ISSUE/RENEWAL)

This application is in terms of section 13 of the Mines and Minerals Act (attach additional sheets or annexures where necessary)

1. Name (and nationality where appropriate). In the case of company attach copy of certificate of incorporation	Address in Botswana
2. Full name(s) of partners/directors/members of association	Nationalities

3. Name(s) of shareholder who is a beneficial owner of more than 5% of the issued capital	Nationalities
4. Details of financial status (attach bankers reference and most recent financial statements)	
5. Technical competence (attach <i>curriculum vitae</i> of professionals to be involved)	
6. Experience (established track record is an advantage but is not essential)	
7. Description of area applied for (attach plan and co-ordinates)	
8. Name(s) of mineral applied for	Period applied for
9. Proposed programme of prospecting operations	Proposed minimum expenditure
Year 1	
Year 2	
Year 3	
10. Details of Botswana prospecting licence held within the preceding 10 years by the applicant or any person controlling, controlled by or under joint or common control with the applicant.	
11. Disclose any other information material to the application	
I being duly authorised, declare that the applicant and its partners/members/directors/shareholders are persons qualified in terms of section 6 of the Mines and Minerals Act to hold a prospecting licence, and that the information contained herein is true and correct.	
Signed Capacity Date	
Place	

**Form II
PROSPECTING LICENCE**

Prospecting Licence No.....

Issued in terms of section 16 of the Mines and Minerals Act.

WHEREAS a company incorporated under the laws of

(hereinafter referred to as "the Holder") has made application for the right to prospect for on land to which the Republic of Botswana holds mineral rights:

AND WHEREAS provision is made under section 14 of the Act for the conferring of such rights by means of a prospecting licence:

NOW THEREFORE the Minister hereby grants to the holder the exclusive right to prospect for in the Licence area for a period of years commencing on and ending on

1. The Licence area shall be the area shown on the map annexed hereto, in extent km², located in district(s) and more fully described in Annexure I hereto; and as reduced from time to time in accordance with the provisions of the Act.

2. In accordance with the provisions of section 70 of the Act, the holder shall, simultaneously with issuance of this licence and thereafter on each anniversary thereof, pay to the Government at the office of the Director of Geological Survey, an annual charge equal to multiplied by the number of square kilometres in the Licence area subject to a minimum annual charge of

	reserves and mining conditions)
(b)	Technical report on mining and treatment possibilities and the applicant's intention in relation thereto
(c)	Proposed programme of mining operations including-
(i)	estimated date by which applicant intends to work for profit
(ii)	estimated recovery rates(s)
(iii)	nature of product
(iv)	envisaged marketing arrangements for sale of mineral product(s)
(v)	environmental impact assessment study
(vi)	environmental management programme
(d)	Forecast of capital investment, cashflow and details of anticipated financing plan
(e)	Outline of proposed employment level and training program.
(f)	Outline of proposed sources of goods and services
(g)	Details of expected infrastructure requirements
(h)	attach audited statement of relevant exploration expenditure incurred prior to this application on the area applied for
11. Disclose any other information material to this application	
12. I being duly authorised, declare that the applicant and its partners/directors/members/shareholders are persons qualified in terms of section 6 of the Mines and Minerals Act to hold a retention licence and that the information contained herein is true and correct.	
Signed.....Capacity	
Date Place.....	

**Form IV
RETENTION LICENCE**

Issued in terms of section 29 of the Mines and Minerals Act.

WHEREAS a company incorporated under the laws of Botswana and holder of prospecting licence number....., and hereinafter referred to as "the Holder", has applied for a retention licence in respect of a deposit of discovered under the said prospecting licence.

AND WHEREAS provision is made under Part V of the Act for the conferring of such rights by means of a Retention licence.

NOW THEREFORE the Minister hereby grants to the holder a retention licence number to retain for future mining operations exclusive rights to deposits of in the retention area on the plan annexed hereto for a period of years commencing on and ending on subject to the provisions of the Act and to the terms and conditions of this licence.

1. The Holder shall upon issue of this licence and thereafter on each anniversary thereof, pay to the government at the office of the Director of Mines a fee in accordance with section 70 of the Act.

2. At the expiry of the retention licence, any minerals recovered or won by the Holder during the retention period shall be disposed of in such manner as the Minister may direct.

GIVEN under my hand at Gaborone this day of in the year

.....
Minister
Ministry of Minerals, Energy
and Water Affairs

**Form V
MINING LICENCE APPLICATION FORM (ISSUE/RENEWAL)**

This Application is in terms of section 38 of the Mines and Minerals Act (attach additional sheets or documents where necessary)

1. Name of applicant (attach copy of certificate of	Address in Botswana
-----------------------------------------------------	---------------------

incorporation)	
2. Full Name(s) of Directors	Nationalities
3. Authorised share capital and issued capital	
4. Name(s) of Shareholder who is a beneficial owner of more than 5% of the issued Capital	Nationalities
5. Details of Financial Status (attach supporting documents, Bankers reference and most recent financial statements)	
6. Technical Competence (established mining track record is an advantage but is not essential)	
7. Prospecting/retention/waiver/mining licence/number	
8. Description of area applied for (attach plan and co-ordinates)	
9. Name(s) of mineral which it is intended to mine	
10. Period for which licence/renewal is sought	
11. Attach parent company guarantee as in Annexure I	
12. Furnish copy of feasibility study as prescribed including (a) to (h) below-	
(a) Details of mineral deposit (including all known, proven, indicated, inferred ore reserves and mining conditions)	
(b) Technical report on mining and treatment possibilities and the applicant's intention in relation thereto	
(c) Proposed programme of mining operations including-	
(i) estimated date by which applicant intends to work for profit	
(ii) estimated recovery rates(s)	
(iii) nature of product	
(iv) envisaged marketing arrangements for sale of mineral product(s)	
(v) environmental impact assessment study	
(vi) environmental management programme	
(d) Forecast of capital investment, cashflow and details of anticipated financing plan	
(e) Outline of proposed employment level and training program	
(f) Outline of proposed sources of goods and services	
(g) Details of expected infrastructure requirements	
(h) Attach audited statement of relevant exploration and arms length acquisition expenditure incurred prior to this application on the area applied for	
13. Disclose any other information material to this application	
14. I..... being duly authorised, declare that the applicant and its partners/directors/members/shareholders are persons qualified in terms of section 6 of the Mines and Minerals Act to hold a mining licence and that the information contained herein is true and correct.	
Signed.....	Capacity
Date.....	Place.....

**ANNEXURE I
PARENT COMPANY GUARANTEE**

WHEREAS X Ltd, a company duly organised and existing under the laws of
..... having its registered office at
..... (hereinafter referred to as "the guarantor" which

expression shall include its successors and permitted assignees) holds directly or indirectly a controlling interest in Y Ltd, a company duly incorporated and registered in Botswana, with its registered office at.....(which company, including its successors and permitted assignees, is referred to hereinafter as "the company"); AND WHEREAS the company is the applicant for/holder of a Mining Licence pursuant to the Mines and Minerals Act of Botswana (hereinafter referred to as "the licence" and "the Act" respectively) issued or to be issued, by the Government of Botswana represented by the Minister of Minerals, Energy and Water Affairs (hereinafter referred to as "the Government") in favour of the said company; AND WHEREAS the guarantor agrees to guarantee the performance of the obligations of the company under the licence and its compliance with the Act; NOW THEREFORE this Deed hereby provides as follows:

1. The guarantor hereby unconditionally and irrevocably guarantees to the Government that it will make available, or cause to be made available, to the company or its permitted assignees, such financial, technical, managerial and other resources as are required to ensure that the company and /or any such assignee is able to carry out the obligations of the company or any permitted assignee as set forth in the licence and under the Act.
2. The guarantor further unconditionally and irrevocably guarantees to the Government the due and punctual compliance with or performance by the company or its permitted assignees, of any obligations of the company or any permitted assignee under the licence and the Act.
3. The guarantor hereby undertakes to the Government that if the company, or any permitted assignees, shall, in any respect, fail to perform its obligations under the licence or commits any breach of such obligations under the licence or the Act, then the guarantor shall fulfil or cause to be fulfilled the said obligations in place of the company or any permitted assignees, and will indemnify the Government against all losses, damages, costs, expenses or otherwise which may result directly from such failure to perform or breach on the part of the company or any permitted assignees.
4. This guarantee shall take effect from the date of the issue of the licence and shall remain in full force and effect for the duration of the said licence and any renewal thereof and thereafter until no obligation remains outstanding and no sum remains payable by the company, or its permitted assignees, under the licence or the Act or as a result of any decision or award made in any arbitration thereunder.
5. This guarantee shall not be affected by any change in the Articles of Association and bye-laws or any change in the ownership or control of the company or the guarantor.
6. The liabilities of the guarantor shall not be discharged or affected by:
 - (a) any time indulgence, waiver or consent given to the company;
 - (b) any amendment to the licence or the Act or to any security or other guarantee or indemnity to which the company has agreed;
 - (c) the enforcement or waiver of any terms of the licence or the provisions of the Act or of any security, other guarantee or indemnity; or
 - (d) the dissolution, amalgamation, reconstruction or reorganisation of the company.
7. This guarantee shall be governed by and construed in accordance with the laws of Botswana.

The seal of X Ltd was hereto duly affixed by in accordance with its articles this day of in the year in accordance with its bye-laws and this guarantee was duly signed by and as required by the said bye-laws, they being duly authorized to represent X Ltd.

.....
Secretary

.....
Chairman and Director

.....
Witness:

Form VI

MINING LICENCE

Mining Licence No.....

Issued in terms of section 41 of the Mines and Minerals Act.

WHEREAS....., a company incorporated under the laws of Botswana and the holder of prospecting/retention/mining licence/waiver ^{1*} number, and hereinafter referred to as "the Holder", has applied for a mining licence in respect of a deposit discovered under prospecting licence number

AND WHEREAS provision is made under Part VI of the Act for the issue or renewal of a Mining Licence;

NOW THEREFORE the Minister hereby grants to the Holder mining licence number to mine for in the mining licence area on the plan annexed hereto for a period of years commencing on and ending on subject to the provisions of the Act and to the terms and conditions of this licence.

1. The Holder shall upon issue of this licence and thereafter on each anniversary thereof, pay to Government at the office of the Director of Mines a fee in accordance with Section 71 of the Act.
2. The Holder shall carry out its mining operations strictly within the mining licence area and in accordance with the approved programme of mining.
3. The Holder shall pay royalty to Government monthly in accordance with Section 66 of the Act.

GIVEN under my hand at Gaborone this.....day of.....in the year.....

.....

*Ministry
of Minerals, Energy
and Water Affairs*

Form VII

MINERALS PERMIT APPLICATION FORM (ISSUE/RENEWAL)

This application is in terms of section 52 of the Mines and Minerals Act (attach additional sheets or documents where necessary)

1. Name of applicant (in case of company attach copy of certificate of incorporation)	Address in Botswana
2. Full name(s) of partners/directors/members of association	Nationalities
3. Name(s) of shareholders	Nationalities
4. Description of area applied for (attach plan and co-ordinates)	
5. Particulars of the minerals for which permit is sought	
6. Period for which permit is sought	
7. Attach proposed programme of working as in Annexure I	
8. Disclose any other information material to this application	
9. I being duly authorised, declare that the applicant and its partners/directors/members/shareholders are persons qualified in terms of section 6 of the Mines and Minerals Act to hold a minerals permit and that the information contained herein is true and correct.	
Signed	Capacity
Date	Place

ANNEXURE I
PROPOSED PROGRAMME OF WORKING

Proposed programme of working:

- (a) Details of mineral deposit (including all known, proven, indicated and inferred ore reserves and mining conditions).
- (b) Proposed programme of mining operations including:
 - (i) estimated date by which applicant intends to work for profit;
 - (ii) estimated capacity of production and scale of operations;
 - (iii) nature of product;
 - (iv) envisaged marketing arrangements for sale of mineral product(s);
 - (v) brief environmental impact assessment study;
 - (vi) brief environmental reclamation programme.

Form VIII
MINERALS PERMIT

Minerals Permit No

Issued in terms of Section 52 of the Mines and Mineral Act

WHEREAS, hereinafter referred to as " the Holder" has applied for the issue/renewal ^{ii*} of a minerals permit in respect of

AND WHEREAS provision is made under Part VII of the Act for the issue/renewal of a minerals permit.

NOW THEREFORE the Minister hereby grants to the Holder a minerals permit number to mine for in the minerals permit area demarcated in the plan annexed hereto for a period of years commencing on and ending on subject to the provisions of the Act and to the terms and conditions of this permit.

1. The holder shall upon the issue of the permit and thereafter on each anniversary thereof, pay to Government at the office of the Director of Mines a fee in accordance with Section 71 of the Act.
2. The Holder shall carry out its operations strictly within the minerals permit area and in accordance with the approved programme of working.
3. The Holder shall pay royalties to Government monthly in accordance with Section 66 of the Act.

GIVEN under my hand at Gaborone this day of in the year

.....
Ministry
of Minerals, Energy
and Water Affairs

SECOND SCHEDULE
FEES

(Section 70)

The annual charges payable under this Act shall be as follows:

- (a) Prospecting Licence - P5.00 per km² or part thereof subject to a minimum of P500 for industrial minerals and P1 000 for all other minerals.
- (b) Retention Licence - P5 000 per km² or part thereof for the first year, increasing annually by P5 000 per km² for the second and subsequent years.
- (c) Mining Licence or Minerals Permit - P100/km² or part thereof.

CHAPTER 72:01
BOTSWANA POSTAL SERVICES
ARRANGEMENT OF SECTIONS

SECTION

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Establishment of Botswana Postal Services and Board of Management

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4. Establishment of Board
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Meetings and Proceedings of Board

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43. Remittance of money through the Post
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46. Forging stamps, dies, etc.
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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
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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
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61. Evidence: acceptance of official marks

PART XI

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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

- (c) 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

- (g) expedient for the performance of its functions and duties;
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 or 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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