

COMMUNICATIONS REGULATORY AUTHORITY ACT, 2012

No. 19



of 2012

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SCHEDULES

An Act to provide for the creation of an independent regulatory authority, the Botswana Communications Regulatory Authority, for the regulation of the communications sector in Botswana, comprising telecommunications, internet and information and communication technologies, radio communications, broadcasting, postal services and related matters; and for matters connected or incidental thereto.

Date of Assent: 09.11.2012

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I – Preliminary

1. This Act may be cited as the Communications Regulatory Authority Act 2012, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and
commencement

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

Interpretation

“Advisory Panel” means the panel of persons appointed under section 81;

“agreement” means an agreement between a postal operator with a sender of any item to provide postal services;

“authorised officer” means an employee of the Authority duly authorised by the Board, the Chief Executive or other person as may be determined by the Authority;

“Authority” means the Communications Regulatory Authority established under section 3;

“Board” means the Board of the Botswana Communications Regulatory Authority established under section 4;

“broadcasting” means the process whereby the output signal of a broadcasting organisation is taken from the point of origin, being the point where such signal is made available in its final format, and is conveyed to any broadcast target area by means of electronic communications;

“broadcasting equipment” means any equipment used for transmitting and receiving broadcasting services including monitors, set top boxes and receivers;

“broadcasting service” means a service which consists in the broadcasting of television or sound material including subscription management services to the public or sections of the public or the subscribers to such service;

“broadcasting system” means a network of broadcasting equipment which is used or capable of being used to provide broadcasting services;

“Chairperson” means the Chairperson of the Board;

“commercial broadcasting service” means a broadcasting service operating for profit and available to the public free of charge or through a subscription;

- "communications sector" means the aggregate regulated telecommunication, broadcasting and postal sphere of activity in terms of this Act;
- "communications services" includes the regulated telecommunication, broadcasting and postal services in terms of this Act;
- "Competition Authority" means the competition body established under the Competition Act;
- "conveyance" means all activities of a postal operator, including collection, transport, sorting and delivery necessary to ensure that a postal item is delivered to the address as indicated by the sender;
- "electronic communication" means the emission, transmission or reception of information, including voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetic, radio or other electronic waves, optical, electromagnetic system or any agency whether with or without the aid of tangible conduct, but does not include content service;
- "express and courier postal services" means postal services with value added delivery of addressed postal items directly to the addressee, either in terms of speed or extra services;
- "franking machine" means a machine for 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;
- "general conditions" means the general terms and conditions for the provision of postal services by a postal operator to govern the agreement;
- "information" means any managerial, personnel, financial, technical, scientific, marketing, commercial, legal (but excluding any legal documents which are subject to legal professional privilege), product and service records in whatever format such records may be held;
- "information and communication technologies" means the technologies including computers, telecommunications, postal and audio visual systems, that enable the collection, processing, transportation and delivery of information and communications services to users;
- "insured postal item" means a postal item insured against loss or damage in which event a compensation equal to the admitted value declared by the sender shall be paid by a Postal operator offering these services to the sender;
- "interconnection services" means services provided by a public postal operator to another postal operator with the aim of sharing its Postal network and so reducing the costs of the network used for the provision of the universal postal services;
- "international reply coupon" means a pre-paid postal mark issued under the UPU-Acts which coupon can be acquired from the public postal operator and is accepted in any post office of a UPU-member state in exchange for postage stamps in that country in a value which suffices in order to send an international surface letter or an air letter the weight of which does not exceed 50 grams;

"item of correspondence" means a postal item in a written or in any other physical medium to be conveyed by a postal operator to the address indicated by the sender on the item itself or on its wrapping;

"member" means a member of the Board;

"net turnover" means the total amounts invoiced to users and all sums otherwise receivable by the licensee or its service providers in respect of the provision of licensed services; after the deduction of —

- (i) any applicable sales or other operators indirect taxes,
- (ii) any amounts payable to other operators for services rendered, and
- (iii) any amounts in relation to the sale or lease entered into:

Provided that due regard shall be made for any duplication in the calculation of the amounts;

"network interconnection" means the linking of two or more electronic communications networks, electronic communications services, broadcasting services, physically or logically, but does not include terminal equipment;

"numbering system" means a system using distinguishing numbers or letters by which connection between different terminal telecommunications equipment points can be established through the use of a telecommunications system;

"P.O. Box" means space capacity at a postal service point made available by the public postal operator or a postal operator authorised under this Act to provide this service to a postal customer, in which box the postal items addressed to the holder of the box under an assigned P.O. number will be deposited;

"postal address" means an address in the form of a P.O. Box number provided by the public postal operator, under which an addressee can collect his or her postal items at a postal service point;

"postal item" means any physical mail item conveyed through a postal network;

"postal money order" means a services based upon UPU-Acts for facilitating the payment of a sum of money from the remitter to the payee through the postal service point;

"postal network" means the network of postal service points and other facilities of a postal operator, such as the transport routes;

"postal operator" means a provider of postal services;

"postal package" means a packet with an individual weight of a maximum of two kilograms conveyed through a postal network;

"postal parcel" means an item of a certain size and weight over two kilograms conveyed through a postal network;

"postal services" means all the services related to the process of collection, transport, sorting and delivery of postal items and includes courier services;

"postal service point" means any physical facility designated for the provision of certain postal services;

"pre-mailing services" means a services consisting of the provision of addressing, printing, mail insertion or pre-sorting services of postal items before conveying them through a postal network;

"Private Bag" means a postal bag designated for the collection of high volumes of mail to be picked up by the addressee at a postal service point;

"public postal operator" means a postal operator designated as such by the Minister under section 67;

"radio" means the conveyance of one or more channels of audio, video or data information by means of an electromagnetic wave most usually propagated in space, having a frequency below 3000 GHz;

- “radio equipment” means wireless equipment which is designed or used for receiving or transmitting messages by means of electromagnetic waves but does not include personal or domestic equipment which is only used for personal or domestic purpose;
- “registered postal item” means a postal item specially registered by a provider of postal services with a payment guarantee against loss or damage against delivery of a written proof of acceptance of the postal item by the addressee;
- “reserved postal services” means that part of the universal postal services that are exclusively provided by the public postal operator as part of universal postal services;
- “regulated sector” means any sphere of activity within the telecommunications, broadcasting and postal service sectors which includes the installation of telecommunications networks; the installation and operation of radio-communication equipment; the provision of postal services; the converging of electronic technologies and the provision of internet services;
- “regulated supplier” means any supplier of goods or services in the regulated sectors whose activities fall within the scope to be regulated by the Authority;
- “senior officer” means a member of the Authority’s management or as may be determined by the Board;
- “service licence” means a licence to provide telecommunications, wireless or postal service issued under this Act;
- “service provider” means any person who provides telecommunications, broadcasting or postal service;
- “stamp” means a postage, or imprinted stamp, or imprinted mark issued by a postal operator to serve as evidence of payment of the applicable tariff for the conveyance, including marks of specially licensed franking machines;
- “state broadcaster” means a Government department designated as a provider of broadcasting services;
- “street letter box” means any posting box placed at public roads or at postal service points with the purpose of the collection of postal items by the public postal operator;
- “subscription management service” means provision of service operated to enable consumption of a subscription broadcasting service;
- “telecommunications equipment” means any equipment which is used for conveying, transmitting or receiving, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, or through the agency of radio waves, of —
- (a) speech, music or other sounds;
 - (b) visual images;
 - (c) signals capable of being interpreted as, or capable of being converted to, sounds, images or other data; and
 - (d) signals serving for the actuation or control of machinery or apparatus;

“telecommunications service” means the emission, transmission or reception of information, including voice, sound, data, internet and electronic communication, text, video, animation, visual images, moving images and pictures, signal or a combination thereof by means of magnetism, radio or other electronic waves, optical, electromagnetic system whether with or without the aid of tangible conduct, but does not include content service, and includes any service ancillary thereto such as —

- (a) the installation, maintenance, adjustment, repair, alteration, removal, relocation or replacement of telecommunications equipment related to a telecommunications system; and
- (b) any directory information service, but does not include a broadcasting service;”

“telecommunications system” means a network of telecommunications equipment which is used or capable of being used to provide a telecommunications service and includes a radio communication system;

“telecommunications system operator” means the person responsible for the technical operation and maintenance of a telecommunications system;

“television” means the conveyance of visual information, together with one or more channels of associated audio or suitably encoded textual information, or both;

“terminal equipment” means telecommunications equipment which is intended to be used or operated by a telecommunications service subscriber;

“universal postal services” means that part of the postal services that is considered as a basic postal services in the common economic and social interest of the inhabitants of Botswana which services must be provided by the public postal operator; and

“UPU-Acts” means the Universal Postal Union Convention (UPU) and the related universal postal union Regulations containing the common rules applicable to the international postal services.

PART II – *Continuation of Authority and Duties of Board*

3. (1) The Telecommunications Authority, established in terms of section 3 of the Act repealed under section 95, shall continue to exist as if established under this Act as the Communications Regulatory Authority.

Continuation
of Authority

(2) The Communications Regulatory Authority is a body corporate with full capacity to sue or be sued in its own name, and to do all such things as bodies corporate may, by law, do and as may be necessary or incidental to the exercise of its powers and the performance of its functions under this Act.

4. (1) The powers and functions of the Authority shall be exercised and performed by a Board consisting of seven members, who shall be appointed by the Minister.

Appointment
of Board

(2) Members shall be selected having regard to their academic qualifications from a reputable institution, experience and expertise in —

- (a) information and communication technology;
- (b) broadcasting ;
- (c) media;
- (d) postal services;
- (e) law;
- (f) consumer protection;
- (g) financial accounting;
- (h) economics;
- (i) general business management; or
- (j) information and technology policy or regulation.

(3) The Minister shall publish in the *Gazette*, the name of each member and his or her period of appointment.

(4) The Minister shall appoint the Chairperson of the Board and the members shall appoint the Vice-Chairperson from among their number.

Administrative
responsibilities
of Board

5. (1) The Board shall —

- (a) be responsible for the effective regulation of the regulated sectors;
- (b) promote and ensure universal access with respect to provision of communications services;
- (c) impose, a universal access and services levy on identified operators for purpose of funding universal access in the communications sector; and
- (d) promote and ensure enhanced performance in the communications sector.

(2) Pursuant to subsection (1) (a), the Board shall —

- (a) prepare a five year strategic plan for the Authority;
- (b) approve such annual business plans as are necessary for the efficient operation of the Authority;
- (c) determine and approve the annual budget for the Authority;
- (d) monitor and seek ways to improve the efficiency of the communications sector and services provided by the Authority, both for the benefit of consumers and licensed operators in the regulated sectors;
- (e) periodically review the performance of the Chief Executive in accordance with the provisions of his or her contract of employment;
- (f) prepare and submit the annual report of the Authority to the Minister in accordance with section 28;
- (g) ensure that an annual audit is carried out in accordance with section 26;
- (h) submit a copy of the audited accounts and a copy of the auditor's report to the Minister in accordance with section 27;
- (i) acquire and sell such moveable and immoveable property as may be necessary for the efficient operation of the Authority;
- (j) enter into such contracts as are required to be entered into under the seal of the Board, for the more efficient operation of the Authority; and
- (k) do anything connected with the matters set out in this section as may be required for the effective operation of the Authority.

- (3) The strategic plan for the Authority shall include an outline of —
- (a) the vision and goals of the Authority;
 - (b) the objectives of the Authority;
 - (c) the anticipated budget for the Authority; and
 - (d) any other matter which may be relevant to the Authority for that five year period.

(4) The strategic plan prepared in accordance with subsection (3) shall be submitted to the Minister.

(5) The Board shall periodically review the strategic plans prepared in accordance with subsection (3) and shall be under a duty to adjust the same so as to reflect any changes in law or policy or changes in the market place affecting the regulated sectors or such other changes as the Board considers require the strategic plans to be altered.

6. (1) The Board shall ensure, that so far as is practicable there are provided throughout Botswana, safe, reliable, efficient and affordable services in the regulated sectors.

Regulatory
responsibilities
of Board

- (2) Notwithstanding the generality of subsection (1), the Board shall —
- (a) protect and promote the interests of consumers, purchasers and other users of the services in the regulated sectors, particularly in respect of the prices charged for, and the availability, quality and variety of services and products, and where appropriate, the variety of services and products offered throughout Botswana, such as will satisfy all reasonable demands for those services and products;
 - (b) where relevant and so far as is practicable, ensure that the regulated sectors have and maintain the resources to provide those services and are otherwise fit and proper persons to provide the services;
 - (c) monitor the performance of the regulated sectors in relation to levels of investment, availability, quantity, quality and standards of services, competition, pricing, the costs of services, the efficiency of production and distribution of services and any other matters decided upon by the Authority;
 - (d) facilitate and encourage private sector investment and innovation in the regulated sectors;
 - (e) enhance public knowledge, awareness and understanding of the regulated sectors;
 - (f) foster the development of the supply of services and technology in each regulated sector in accordance with recognised standards;
 - (g) encourage the preservation and protection of the environment and conservation of natural resources in accordance with the law by regulated suppliers;
 - (h) process applications for and issue, licences, permits, permissions, concessions and authorisations for regulated sectors as may be prescribed;
 - (i) notwithstanding subparagraph (h), Authority shall, prior to the issuance of Public Telecommunications Operator and broadcasting licenses, notify the Minister;

- (j) impose administrative sanctions and issue and follow up enforcement procedures to ensure compliance with conditions of licences, permits, permissions, concessions, authorities and contracts;
- (k) promote efficiency and economic growth in the regulated sectors and disseminate information about matters relevant to its regulatory function;
- (l) perform all additional functions and duties as may be conferred on it by law;
- (m) hear complaints and disputes from consumers and regulated suppliers and resolve these, or facilitate their resolution;
- (n) consult with other regulatory authorities with a view to improving the regulatory services it offers, and obtaining market intelligence about the sectors it regulates;
- (o) foster and promote the use of consumer forums to provide information to enable it to improve its regulatory duties and functions;
- (p) ensure that the needs of low income, rural or disadvantaged groups of persons are taken into account by regulated suppliers;
- (q) maintain a register of licences, permits, permissions, concessions, authorities, contracts and regulatory decisions which is available to the public and from which the public may obtain a copy of any entry for a prescribed fee;
- (r) make industry regulations for the better carrying out of its responsibilities under this Act including —
 - (i) codes and rules of conduct,
 - (ii) records to be kept by regulated suppliers, including the form and content of accounting and business records and information and documents to be supplied to the Authority,
 - (iii) definitions of, and information about cost accounting standards to be adopted by regulated supplier,
 - (iv) standards applicable to regulated services,
 - (v) complaint handling procedures,
 - (vi) circumstances surrounding access rights by one regulated supplier to the facilities owned or controlled by another regulated supplier,
 - (vii) records, form and content for Subscriber Identity Module (SIM) card registration to be kept by regulated suppliers, and
 - (viii) price control regulations;
- (s) administer and comply with the provisions of this Act;
- (t) at the request of the Government, represent Botswana in international regulatory and other fora concerning the regulated sectors;
- (u) advise the Minister on matters relating to the regulated sectors and proposed policy and legislation for those sectors;
- (v) do anything reasonably incidental or conducive to the performance of any of the above duties;
- (w) take regulatory decisions in an open, transparent, accountable, proportionate, and objective manner and not to show undue preference to any person or organization; and
- (x) promote and facilitate convergence of technologies.

(10) An authorised officer or police officer of the rank of Sergeant or above may, without warrant, enter premises —

- (a) on which any telecommunication operator carries on business; or
- (b) which are owned or occupied by a person who he or she has reasonable cause to believe is using, without a licence, the premises for the carrying out of a business or activity for which a licence is required under this Act,

and shall carry out such examination, inspection or enquiry, and do such things as may appear to him or her necessary, to ascertain whether or not the provisions of this Act are being complied with.

(11) An authorised officer or police officer may seize —

- (a) any communication, broadcasting, postal or any equipment which he or she has reasonable cause to believe is being used by, or is in the possession or under the control of a person in contravention of this Act; and
- (b) any book, record or document which he or she has reasonable cause to believe will afford evidence of the commission of an offence under this Act.

(12) An authorised officer may order a person to cease using, pending an enquiry by the Authority, any communication equipment which, in his or her opinion, is being operated in contravention of this Act or the terms and conditions of a licence.

(13) Any person who obstructs or hinders an authorised officer or a police officer in the exercise of his or her powers under this section, or who fails or neglects to comply with an order under subsection (4) commits an offence and is liable to a fine of not less than P10 000 but not more than P500 000.

(14) A person who, without reasonable excuse, fails to comply with a direction, order or requirement given by the Authority or an authorised officer in the performance of the functions of the Authority shall be liable to a civil penalty not exceeding P50 000 to be imposed by the Authority and in the case of a body corporate, the Authority may determine and impose an appropriate civil penalty as may not exceed 10 per cent of the net turnover of such body corporate for the previous year.

9. Subject to the provisions of section 10, each member shall hold office for a period not exceeding three years and may be eligible for re-appointment for one further term.

Tenure of office
for members

10. No person shall be appointed as a member, nor shall any person be qualified to hold office as a member who —

- (a) has in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged,
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;

Disqualification
from Board
membership

(3) The Board shall —

- (a) approve the general conditions applicable to the provision of the Universal Postal Services to be proposed by the Public Postal Operator;
- (b) monitor the cost accounting system as proposed by the Public Postal Operator for the provision of the Universal Postal Services and advise the Minister on the application thereof; and
- (c) conduct operational audits on the provision of postal services by Postal Operators.

7. (1) The Authority shall maintain —

- (a) a register of regulatory documents which shall be made available to members of the public at the principal office of the Authority during its normal office hours; and
- (b) a copy of such register at its regional offices.

Register of
regulatory
documents

(2) The register shall contain those matters set out in Schedule I and the Board shall add to the category of documents specified therein.

(3) The Authority shall comply with the request of a person who submits information and requests anonymity, if his or her name or any information which might identify that person appears in the register.

8. (1) The Authority may require from any regulated supplier such information as the Authority deems necessary to enable it to carry out its functions under this Act.

Power to obtain
information

(2) For the purposes of this section, information shall include any information which is in the actual possession, custody or control of any person or can reasonably be obtained by that person.

(3) Subject to the provisions of subsection (6), any request for information shall —

- (i) be made in writing by an officer of the Authority,
- (ii) be addressed to, and served, in the case of an individual, at his or her last known home address, and in the case of a corporation, to the address of that corporation's registered office or principal business premises,
- (iii) specify the nature and type of the information sought by the Authority in sufficient detail as shall enable the person to identify and provide the information,
- (iv) specify in detail the reason why the Authority is making the request for information,
- (v) set out the nature of any possible offences in respect of which the information is required by reference to the relevant legislation,
- (vi) specify whether the Authority requires access to the information at the address of the person or a copy of the information, and if at the address, then details of that address and any other addresses that the Authority considers relevant, and
- (vii) specify the format and the time within which the information is to be provided.

(4) Upon receipt of a request for information from the Authority, a person to whom the request is sent, shall, at the Authority's option as set out in the letter of request, either give access to the Authority to inspect the information, or provide a copy of such information and, if the Authority is given access to the information, the Authority shall be entitled to make copies of, or take extracts from, such information.

(5) Information required by the Authority shall be made available to the Authority within the period specified by the Authority when making the request for information.

(6) Any person who gives or authorises making or issuance of a statement or any information or access to information pursuant to this section shall not give information or access to information which he or she knows to be false or misleading.

(7) Notwithstanding the provisions of subsections (1) and (2), neither the Board, nor the Chief Executive, nor any senior officer, member of a committee, co-opted person or employee of the Authority shall disclose to any other person, any information so acquired, if that disclosure would be detrimental to the person or business of the person or corporation or organisation providing that information except in the following circumstances —

- (a) the person is declared bankrupt or insolvent in Botswana, or, if a company or organisation, is being wound up, and the information is required in connection with bankruptcy or winding up proceedings;
- (b) civil or criminal proceedings arise involving that person and the Authority;
- (c) the Chief Executive, employee or officer of the Authority summoned to appear before a court of competent jurisdiction in Botswana and the court orders the disclosure of the information;
- (d) the information is required by an employee or officer in the employment of the Authority, or by an auditor or legal representative of the Authority, who requires it or is entitled to know the information in the course of his or her professional duties; or
- (e) the information is required by any law enforcement agency in Botswana in connection with an investigation being carried out by that agency or under its authority in accordance with the provisions of the relevant enactments.

(8) Any person who contravenes the provisions of this section commits an offence and is liable to —

- (a) a fine of not less than P10 000 but not more than P50 000 or to imprisonment for a term of not less than one year but not more than four years, or to both; or
- (b) in the case of a corporation a fine not exceeding 10 per cent of the net turnover of the body corporate for the previous year and where such corporation was not trading in the previous year, the current net turnover.

(9) The holder of a licence granted under this Act shall, on demand by an officer of the Authority authorised to inspect licences, or on demand of a police officer, produce his or her licence for inspection.

- (b) has within a period of ten years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence which has not been overturned on appeal or in respect of which he or she has not received a free pardon, or
 - (ii) outside Botswana, of an offence, which in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for one month or more without the option of a fine, whether that sentence has been suspended or not, and which conviction has not been overturned on appeal and in respect of which he or she has not received a free pardon;
- (c) has within two years immediately preceding the date of his or her proposed appointment, worked as a chairperson of, or director or senior manager in, or has provided full-time independent consultation services to, any regulated supplier or any affiliate of that regulated supplier, whether situated within or outside Botswana;
- (d) is the holder of any office in any party, movement or organisation of a political nature in Botswana;
- (e) holds office in any district, city or town council or central government;
- (f) is an executive or non-executive chairperson, director or officer in a regulated supplier;
- (g) holds any controlling interest in any regulated supplier, or is the holder of a licence issued by the Authority, other than a licence required for his or her personal use;
- (h) has either himself or herself, or through a family member, a direct or indirect financial interest in the industries regulated by the Authority;
- (i) is a serving member of the judiciary within Botswana;
- (j) is not a citizen of Botswana;
- (k) is an employee of the Authority; or
- (l) who has been required to resign his or her position in accordance with section 11.

Vacation of
office

11. (1) A member shall vacate his or her office and his or her office shall become vacant —

- (a) if he or she becomes disqualified in terms of section 10 to hold office as a Board member;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) if he or she is absent from three consecutive meetings of the Board, without the permission of the Board or providing reasonable excuse to the Board, or is present at less than half of the Board meetings in any one calendar year;
- (d) upon his or her death;
- (e) upon the expiry of three months' notice given in writing to the Minister, of his or her intention to resign from office;

- (f) if he or she becomes mentally or physically incapable of performing his or her duties as a member provided that if there arises any doubt as to whether he or she is physically or mentally incapable, he or she shall either submit himself or herself, or at the request of the remaining members, shall submit to a medical examination by two registered medical practitioners who are not personally known to him or her;
- (g) if he or she acts in anyway so as to bring the name of the Authority into disrepute;
- (h) if his or her term of office comes to an end, and, being eligible for re-appointment for a further term of office, he or she is not re-appointed for such further term of office;
- (i) if he or she fails to disclose any material fact that would have disqualified him or her from appointment as a member;
- (j) if he or she ceases to be a citizen of Botswana;
- (k) if he or she is found guilty of unprofessional conduct by a committee, board or other body constituted for the purpose of adjudicating on matters of discipline or conduct; or
- (l) if he or she is required to resign in accordance with the provisions of section 18 (2).

(2) The Minister shall, in writing, immediately suspend from office a member against whom criminal proceedings are instituted for any offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any allowances as a member.

(3) The Minister shall revoke any suspension imposed under subsection (2) immediately in writing in the event that the Director of Public Prosecutions discontinues the proceedings against the member, or the proceedings against the member are dismissed by the court or the member is acquitted.

(4) Upon the revocation under subsection (4), the member shall be entitled to resume his or her position and, if he or she has served less than one term of office, to seek re-election as a member.

12. When a member vacates office pursuant to section 11 of the Act, the Chairperson of the Board shall inform the Minister in writing and the Minister shall appoint another member.

Filling of
vacancy

13. (1) A member may be paid such remuneration and other allowances and such travelling, accommodation and subsistence expenses incurred during his or her service on the Board as may be determined by the Minister.

Remuneration
of members

(2) Members shall receive the same remuneration except for the Chairperson and the Vice Chairperson who shall receive remuneration commensurate with their positions.

14. A person shall not, during a period of 12 months after the expiration or termination of his or her term of office with the Board —

Restrictions
on members

- (a) enter into any contract for the supply of services regulated by this Act to, any regulated supplier under the jurisdiction of the Authority; or
- (b) acquire or hold any financial interest, in excess of 5 per cent of the issued share capital of any regulated supplier.

PART III – *Meetings and Proceedings of Board*Meetings of
Board

15. (1) Subject to the provisions of this Act, the Board shall regulate its own procedure for meetings.

(2) The Board shall meet as often as it is necessary or expedient for the discharge of its functions, and such meetings shall be held at such places and times and on such days as the Chairperson may determine in consultation with the Chief Executive.

(3) Notwithstanding subsection (2), there shall be at least one ordinary meeting in each quarter of the year.

(4) Meetings of the Board shall be called by the Chairperson giving at least 14 days notice unless four of the members of the Board consent to shorter notice.

(5) The Chairperson shall provide to each member the agenda for the meeting and any materials which support each agenda item at the time when the notice for the meeting is issued.

(6) The Chairperson shall call a special meeting of the Board within seven days of receipt of a request in writing of at least three members of the Board for such special meeting to be held.

(7) Four members of the Board shall form a quorum.

(8) At any meeting of the Board, the Chairperson shall preside, and in his or her absence, the Vice Chairperson and in the absence of both the Chairperson and the Vice Chairperson, the members of the Board present shall elect from among their number, a chairperson for the purposes of that meeting.

(9) The decisions of the Board shall be by a majority of votes, and in the event of an equality of votes, the Chairperson, or the Vice Chairperson, or such other person as shall be presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(10) Minutes of each meeting of the Board shall be kept and shall be confirmed at a subsequent meeting of the Board.

(11) Where the members form a quorum, the proceedings of any meeting of the Board shall not be considered invalid by reason of the fact that there exists a vacancy in its number.

(12) Where a member is disqualified from sitting in a meeting in terms of section 10 of the Act and where the members present form a quorum there shall not be considered to be any defect in the proceedings of the Board.

(13) The minutes shall record in full any regulatory decision taken by the Board, including decisions concerning the resolution of disputes, together with the factual and legal basis for such decision.

Co-opted
members

16. (1) Subject to section 10, the Board may invite any person, not being a present member of the Board, to attend any Board meeting or otherwise assist it with its deliberations, and any person so invited shall not have any voting or other rights on the Board.

(2) The provisions of sections 18 and 19 shall with necessary modifications apply to a co-opted member.

Signification
of documents

17. All documents made by, and all decisions of the Board shall be signified under the hand of the Chairperson, Chief Executive, Board Secretary or any member or senior officer of the Authority generally or specifically authorised.

18. (1) If a member is present at a meeting of the Board at which any matter in which the member is directly or indirectly interested in a private capacity is the subject of consideration, he or she shall, as soon as practicable after the commencement of the meeting, declare such interest and shall not, unless the board otherwise directs, take part in any discussion or voting of the Board on such matter.

Conflict of
interest

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

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

(4) A member who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

19. (1) A member shall not disclose any confidential information relating to the affairs of the Board, which he or she acquired during the performance of his or her duties under this Act.

Confidentiality

(2) Notwithstanding the provisions of subsection (1), a member may disclose information relating to the affairs of the Board acquired during the performance of his or her duties —

(a) within the scope of his or her duties under this Act; or

(b) when required to —

(i) by an order of court,

(ii) under any written law, or

(iii) in the investigation of an offence.

(3) Any person who contravenes the provisions of this section commits an offence and is liable to a fine of not less than P10 000 but not more than P50 000 or to imprisonment for a term of not less than one year but not more than four years, or to both.

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

Committees of
Board

(2) The Board may appoint to the committees constituted under subsection (1), such number of persons as it considers appropriate, and such persons shall hold office for such period as the Board shall determine.

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

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

(5) Each committee shall keep minutes of its meetings and shall keep the Board informed of its activities in writing.

(6) A member of a committee shall be paid such remuneration and other allowances, if any, from the Authority's funds, as the Board may determine.

(7) Any committee appointed by the Board shall have advisory powers only and shall not be authorised —

- (a) to take and implement regulatory decisions; or
- (b) to resolve disputes.
- (8) The committee appointed by the Board shall transmit to the Board, in writing, its recommendations for the resolution of a dispute by the Board.
- (9) The members of a committee shall appoint the chairperson from among their number.
- (10) The provisions of sections 10, 11, 12, 18 and 19 shall with necessary modification apply to a member of a committee.

PART IV – *Chief Executive and Staff*

Appointment of Chief Executive

21. (1) There shall be a Chief Executive of the Authority who shall be appointed by the Minister on recommendation by the Board.
- (2) No person shall be qualified for appointment to the position of Chief Executive unless the person —
- (a) possesses such experience as the Minister may prescribe or approve; and
 - (b) has demonstrated that he or she is competent to carry out the functions of the Authority.
- (3) The Chief Executive shall, subject to such specific directions on matters of policy as may be given by the Board, be charged with the overall responsibility for the efficient administration and organisation of the Authority and shall report directly to the Board.
- (4) The Chief Executive shall report to the Board on issues of risk management, internal controls, corporate governance and —
- (a) review the vision, goals and strategic plans of the Authority and recommend any alterations to these which are required by changes in the law, technology or the markets in which the regulated suppliers operate;
 - (b) monitor and seek ways to improve the efficiency of the services provided by the Authority, both for the benefit of consumers and regulated suppliers; and
 - (c) periodically review the performance of senior officers of the Authority in accordance with the provisions of their contracts of employment.
- (5) The Chief Executive shall be an *ex-officio* member of the Board but shall not have any voting rights.
- (6) The Chief Executive may delegate to any senior officer of the Authority, the exercise of any powers which he or she is authorised to exercise under this Act.
- (7) The Chief Executive may resign from office by giving three months' notice in writing to the Minister.

(8) Notwithstanding the provisions of subsection (7), the Minister on recommendation by the Board may remove the Chief Executive from office at any time, without giving notice if the Chief Executive —

- (a) misconducts himself or herself or demonstrates incompetence;
- (b) is involved in such a conflict of interest as shall warrant his or her removal from office;
- (c) is bankrupt or insolvent;
- (d) absents himself or herself from his or her duties without reasonable cause or explanation; or
- (e) is convicted of a criminal offence which carries with it the possibility of a term of imprisonment, whether or not such term is imposed, or if imposed, is suspended, and such conviction is not overturned on appeal or a free pardon is granted.

22. (1) The Board shall appoint an internal auditor for the Authority on the recommendations of the Chief Executive, and upon such terms and conditions as the Board shall determine.

Appointment of
internal auditor

(2) The internal auditor may be —

- (a) a person appointed by the Authority as a full-time or part-time employee; or
- (b) a corporation which is not affiliated with the Authority.

(3) A corporation shall not be appointed by virtue of subsection (2) (b), unless it can demonstrate recent, continuous, credible and substantial experience of carrying out the functions of an internal auditor.

(4) The Board may remove the internal auditor appointed under subsection (2) (a) from office at any time, without giving notice if he or she —

- (a) misconducts himself or herself or demonstrates incompetence;
- (b) is involved in such a conflict of interest as shall warrant his or her removal from office;
- (c) is bankrupt or insolvent;
- (d) absents himself or herself from his duties without reasonable cause or explanation;
- (e) is convicted of a criminal offence which carries with it the possibility of a term of imprisonment, whether or not such term is imposed, or if imposed, is suspended, and such conviction is not overturned on appeal or a free pardon is granted; or
- (f) conducts himself or herself in such a way that the Board by unanimous resolution demands the removal of the internal auditor from office.

(5) The corporation appointed by virtue of subsection (2) (b), may be removed from office in accordance with its terms and conditions of appointment.

(6) The internal auditor shall —

- (a) review the income and expenditure of the Authority and recommend to the Board methods by which expenditure might be reduced;
- (b) assist the Board in the annual audit of its accounts and the preparation of the annual report; and
- (c) provide advice and assistance with any other matter as may be reasonably required by the Board concerning the operation of the Authority and the services rendered by the Authority.

Appointment of
senior officers
and other staff

23. (1) The Board shall additionally appoint the senior officers of the Authority on the recommendations of the Chief Executive, on such terms and conditions as the Board shall determine, and in making such appointments, the Board shall have regard to the need for such officers to have appropriate knowledge and experience to perform their duties.

(2) The Chief Executive shall appoint such other officers and staff as may be necessary for the proper discharge of the functions of the Authority on such terms and conditions as the Board shall determine.

(3) The dismissal of senior officers shall be made by the Board, and the dismissal of all other officers and staff shall be made by the Chief Executive or such other senior officers as he or she may delegate to perform that function.

(4) The terms and conditions of employment, benefits, gratuities or other allowances of the staff of the Authority shall be as determined by the Board on the recommendation of the Chief Executive and shall be paid from the Authority's revenues.

(5) The Board shall appoint a Board Secretary who shall attend meetings of the Board without the right to vote and shall —

- (a) advise the Board on all legal, procedural and corporate governance issues in respect of its responsibilities, deliberations and decisions; and
- (b) be responsible for the accurate and complete recording of the Board's proceedings and decisions.

PART V – *Financial Provisions*

The Authority's
funds

24. (1) The Authority's funds shall consist of —

- (a) fees levied in respect of the application for, and grant of, licences, approvals, permissions, contracts, concessions, including any amendments thereto requested by the regulated supplier, and annual or other periodic renewals thereof;
- (b) annual fees, which shall be a percentage, determined by the Authority, of the net operating revenues of each regulated supplier in each calendar year which is attributable to regulated activities;
- (c) such fees as the Authority may impose for goods and services provided under this Act or any Act permitting the Authority to charge for such goods and services;
- (d) subject to the provisions of subsection (2), grants, contributions, donations and endowments from any source;
- (e) subject to the provisions of subsection (3), monies received from the National Assembly; and
- (f) such other fees as the Authority may at any time lawfully raise or impose under this Act.

(2) The Authority shall not accept any grant, contribution, donation or endowment that is received from any regulated supplier or its associated companies or subsidiaries, but shall forthwith return the same to the donor.

(3) Any monies received from the National Assembly shall be in respect only of specific projects agreed between the National Assembly and the Authority and shall be by way of loan or grant for that project and prior to the receipt of any loan by the Authority, the rate of interest and the period of the loan shall be agreed between the Authority and the Minister responsible for finance.

(4) The Authority shall set out in detail in its annual report, the sources of its funds.

25. The financial year of the Authority shall be a period of 12 months commencing on 1st April each year and ending on 31st March of the following year.

Financial year

26. (1) The Authority shall keep proper accounts and records in relation to its funds and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities and income and expenditure of the Authority in a form which shall conform to the best commercial accounting standards as set out in the Schedule I.

Accounts, Audit
and Annual
Report

(2) The Board shall appoint a reputable firm of independent auditors to audit accounts of the Authority in respect of each financial year, within three months or such extended time after the end thereof as the Minister may direct.

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

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

27. (1) The Board shall submit a copy of the audited accounts of the Authority to the Minister, together with the report of the auditors, within 14 days of their completion, or such extended time as the Minister may determine on application by the Authority.

Provision of
accounts to
Minister

(2) The Minister shall, within 30 days of receipt of the account and reports under subsection (1), lay the auditors' report and accounts before the National Assembly.

28. (1) The Authority shall, within a period of six months after the end of the financial year or such extended time after the end thereof as the Minister may direct, submit to the Minister a comprehensive report on its operations during such year containing such matters as are set out in Schedule II.

Annual Report
to Minister

(2) The Authority shall cause the report to be published and made available for sale to members of the public for a prescribed fee.

Annual plan

29. (1) The Board shall submit to the Minister for approval, at least three months prior to the commencement of each financial year, an annual plan for the Authority, which shall include —

- (a) a budget for that financial year;
 - (b) the goals of the Authority for the forthcoming year;
 - (c) the proposed activities of the Authority for the forthcoming year; and
 - (d) any other matter which shall seem relevant to the Board.
- (2) The Board shall ensure that, so far as is possible —
- (a) its income derived from the sources set out in section 24 meets the expenditure to be incurred in carrying out the Authority's duties and obligations; and
 - (b) the affairs of the Authority shall be conducted in an efficient and cost effective manner, with a view to minimising unnecessary expenditure, whilst achieving its regulatory responsibilities under this Act.

(3) At the end of each financial year, any excess of income received by the Authority over expenditure properly incurred shall be deposited in the Universal Service and Access Fund.

(4) Notwithstanding subsection (3), the Authority may request from the Minister whatever portion of the surplus funds as they may require for their income for the following financial year.

(5) When preparing the budget, the Board shall ensure that funds obtained from each regulated sector in accordance with section 24 shall sufficiently cover the expenditure to be incurred in the regulation of that sector.

(6) Any funds received by the Board which are not immediately required for the performance of its regulatory functions may be invested on short-term deposit with a reputable bank or other financial institution having a place of business in Botswana.

(7) All monies received by way of administrative fines which are levied by the Board in the execution of the Board's regulatory powers, shall be —

- (a) paid out by the regulated supplier which is subject to the administrative fine; and
- (b) paid directly by the Board into the Consolidated Fund.

Pension and other funds

30. The Authority may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, resignation, retirement or discharge of its staff and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.

PART VI – *Broadcasting licences*

31. (1) A person shall not carry out any broadcasting or re-broadcasting activity unless he or she has a valid licence issued by the Board.

Application for
broadcasting
and re-
broadcasting
licences

(2) Notwithstanding subsection (1), a state broadcaster shall not require a licence to operate.

(3) An application for a broadcasting or re-broadcasting licence shall be made to the Board in the prescribed manner.

(4) The Minister may make regulations for —

- (a) the payment of an annual or other fee for a broadcasting or re-broadcasting licence;
- (b) the frequencies that may be used in the operation of a station, the power limitations in respect of a station and any other technical specifications;
- (c) the location of a transmitter station and the geographical area to which the broadcast or re-broadcast may be made; and
- (d) the classification of broadcasting licences, subscription management service licences and the applicable conditions thereto.

(5) A person who contravenes subsection (1) commits an offence and is liable to a fine of not less than P10 000 but not more than P2 000 000, or to imprisonment for a term of not less than one year but not more than 10 years, or to both.

32. (1) Subject to the availability of frequencies, and subject to the provisions of subsection (2), the Board may, on receipt of an application for a broadcasting or re-broadcasting licence, if it is satisfied that the applicant has fulfilled all the requirements for a grant of licence, issue a licence to the applicant.

Issue of
licences

(2) A licence issued under subsection (1) may be issued subject to such conditions and restrictions, including geographical restrictions, as the Board may consider necessary, and such conditions and restrictions shall be endorsed on the licence.

33. A licensee shall not broadcast or re-broadcast —

- (a) any material or programme of which he or she is not the copyright owner unless with the permission of the copyright owner; or
- (b) any broadcasting signal received by him or her for the purpose of broadcast or re-broadcasting, unless he or she has, prior to the broadcast or re-broadcast, obtained a written permission of the copyright owner of the material, programme, or broadcast or re-broadcasting signal to do so.

Restrictions on
broadcasting or
re-broadcasting
of programmes

34. (1) No licence granted by the Board under this Part shall be transferred, assigned or encumbered in any way without the prior approval of the Authority.

Transfer of
broadcasting
licence

(2) An application for the transfer, assignment or encumbrance of a licence shall be made to the Authority in such form as the Minister may prescribe, and upon payment of such fee as may be prescribed.

(3) Any person who contravenes subsection (1) commits an offence and is liable to a fine of not less than P10 000 but not more than P2 000 000.

Notice of change
of particulars of
licensee

35. (1) Whenever —

- (a) the name of any broadcasting or re-broadcasting service licensed under this Part is changed;
- (b) any person acquires the proprietorship or any interest in the proprietorship of any broadcasting or re-broadcasting service under this Part; or
- (c) the director, producer or proprietor of any such broadcasting or re-broadcasting service is changed,

the proprietor of such broadcasting or re-broadcasting service shall, subject to subsection (2), lodge a notice of such change or acquisition with the Authority.

(2) The Authority may —

- (a) approve the change or acquisition and shall make the necessary correction in the register; or
- (b) refuse to approve the change or acquisition and revoke the licence of the licensee.

(3) Any person who —

- (a) knowingly lodges or causes to be lodged with the Authority any return or notice under this section which is false in any material particular; or
- (b) carries out any broadcasting or re-broadcasting activities in contravention of this section,

commits an offence and is liable to a fine of not less than P10 000 but not more than P2 000 000, or to imprisonment for a term of not less than one year but not more than 10 years, or to both; and in the case of a corporation a fine not exceeding 10 per cent of the net turnover of the body corporate for the previous year and where such corporation was not trading in the previous year, the current net turnover shall be used.

(4) For the purposes of this section the Authority shall cause to be established and maintained a register of licensees wherein shall be entered every return made under this section.

Record kept by
licensee

36. A licensee shall —

- (a) keep and store sound and video recordings of all programmes broadcast or re-broadcast for a minimum period of three months after the date of transmission of the broadcast or re-broadcast, or for such further period as may be directed by the Board; and
- (b) on demand by the Board, produce such material that has been broadcast for examination or reproduction.

Programmes not
suitable for
exhibition to
children

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37. Without prejudice to the provisions of section 178 of the Penal Code a licensee shall, where a programme to be broadcast or re-broadcast is not suitable to be exhibited to children, advise or warn members of the public accordingly.

PART VII – Telecommunications

A. LICENCES

38. (1) The Authority shall establish and maintain a non-discriminatory and efficient numbering and domain names system regulatory framework to be applied by all service providers and licensed operators in order to ensure fair access to such services and the efficient allocation of numbering and domain names.

Numbering and
domain names
system

(2) The Authority shall maintain and manage a central numbering and domain names database system which shall consist of a scheme of identification to ensure that electronic communications are correctly and efficiently directed to the point of reception.

(3) A licensee who uses the numbering and domain names system under subsection (1) shall submit to the Authority, written customer information on all addresses and numbers, including numbers of pre-paid subscribers allocated in terms of the licence.

(4) The regulatory framework under subsection (1) shall include —

- (a) matters relating to numbering and domain names policy;
- (b) administrative fees payable by a licensee for the allocation of numbers and addresses;
- (c) the conditions under which a licensee may be required to surrender unused numbers and addresses to the Authority for re-allocation; and
- (d) guidelines for transforming the numbering plan to a non-geographic numbering system which takes into account —
 - (i) technology developments,
 - (ii) implementation of number portability to enhance competition, and
 - (iii) inter-operation between telephone number and domain name systems.

39. (1) A person shall not provide a telecommunications service (including cellular telephony services, packet switched data services, paging services and voice over internet services) unless he or she has been granted a licence by the Board to do so.

Service licence

(2) Notwithstanding the provisions of subsection (1), no licence shall be required for the following —

- (a) the provision of telecommunications services on a private telecommunications system within a single area of a person's property, if such system is independent of the public system and does not cause damage, injury or interference to such public system;
- (b) the provision of fax services, provided that no separate network is established;
- (c) the operation of a public call box service;
- (d) telecommunications service provided by re-sellers, internet café, call centers and tele-centres;
- (e) the publication of telephone directories; and
- (f) the sale of terminal equipment other than radio equipment.

(3) The Minister may prescribe entities exempt from the provisions of subsection (1).

(4) Any person who contravenes subsection (1) commits an offence and is liable to a fine of not less than P10 000 but not more than P2 000 000, or to imprisonment for a term of not less than one year but not more than 10 years, or to both.

System licence

40. (1) A person shall not operate a telecommunications system unless he has a valid licence issued by the Board to do so.

(2) The Board may, with the approval of the Minister, exempt, from the provision of subsection (1), such persons as the Minister may prescribe.

(3) Any person who contravenes subsection (1) commits an offence and is liable to a fine of not less than P10 000 but not more than P2 000 000, or to imprisonment for a term of not less than one year but not more than 10 years, or to both.

Applications through tendering process

41. An application for a licence to the Board may, if the Authority deems it appropriate, be invited through a tendering process or any other competitive process in accordance with such procedures as the Authority may determine.

Transfer of telecommunications licences

42. (1) A licence issued by the Board under this Part shall not be transferred, assigned or encumbered in any way without the prior approval of the Board.

(2) An application for the transfer, assignment or encumbrance of a licence shall be made to the Board in such form as may be prescribed, and upon payment of such fee as may be prescribed.

(3) Any person who contravenes subsection (1) is liable to a civil penalty not exceeding P50 000 to be imposed by the Authority and where a body corporate is in contravention of subsection (1), the Authority may impose a civil penalty not exceeding 10 per cent of the net turnover of such body corporate in the previous financial year.

Change of ownership of licence

43. (1) A licensee who is a body corporate shall, where a change in the ownership thereof occurs, notify that change in writing to the Authority.

(2) The Authority may, where in its opinion the change in ownership of a licence which is held by a body corporate would be detrimental to the development of the telecommunications sector or would not facilitate the exercise of the Authority's functions under this Act, revoke such licence.

Limitation of number of licences

44. (1) The Authority may limit the number of licences which may be issued for any particular type of telecommunications service and shall, where it does so, publish in the *Gazette* its reasons for doing so.

(2) The Authority shall, not less than three months before doing so, or not less than three months before the expiry of any licence issued in terms of this Act, publish, in the *Gazette*, its decision to limit the number of licences which it will issue in respect of any particular type of telecommunications service.

B. RADIO COMMUNICATION

45. (1) A person shall not —

- (a) possess or operate a radio communication network;
- (b) possess or operate radio communication equipment, whether in assembled or unassembled form; or
- (c) erect a radio communication network,

unless he or she has a valid radio licence issued by the Board to do so.

(2) Notwithstanding the provisions of subsection (1), a person who possesses or operates equipment which can be used only for receiving radio messages does not require a licence.

(3) Notwithstanding the provisions of subsection (1), the Minister may prescribe entities exempt from the provisions of subsection (1).

(4) A radio licence issued in terms of this section shall specify —

- (a) the radio frequency allocated to the applicant;
- (b) the type and characteristics of the antenna and radio transmitter to be used;
- (c) the geographical area in which any mobile radio transmitter, where applicable, may be used;
- (d) the place at which the antenna or fixed radio transmitter may be located;
- (e) the obligation, if any, to share frequency space with any other person; and
- (f) such other information as the Minister may prescribe.

(5) The Board shall issue a radio licence subject to the following conditions —

- (a) that the radio transmitter will be used in such a manner that the licensed use of radio telecommunications equipment is not detrimentally affected;
- (b) that the use of the radio transmitter will not infringe upon the frequency space used by the Botswana Defence Force or the Botswana Police Service; and
- (c) such other conditions as the Board deems necessary.

(6) Any person who contravenes subsection (1) commits an offence and is liable to —

- (a) in the case of an individual, a fine of not less than P1 000 but not more than P50 000, or to imprisonment for a term of not less than three months but not more than four years, or to both; or
- (b) in the case of a corporation, a fine of not less than P10 000 but not more than P2 000 000.

46. The Board shall not, without the prior written approval of the Minister, issue any exclusive licence under this Part.

47. The Authority shall —

- (a) ensure the rational use of the radio frequency spectrum in Botswana by establishing and maintaining a national radio frequency plan;
- (b) ensure that the needs of existing and new radio services are met;
- (c) monitor radio frequency occupancy;
- (d) establish standards governing the use of frequency bands in accordance with international regulations;

Radio licence

Exclusive
licencesRadio
frequency
management

- (e) set the conditions and tariffs applicable in connection with the allocation of radio frequencies to the holders of telecommunications licence holders;
- (f) negotiate with other countries and with international organisations in connection with radio frequency spectrum management and matters related thereto;
- (g) establish the necessary technical standards in relation to the radio frequency spectrum;
- (h) allocate radio frequencies in a manner which will avoid harmful interference, particularly in relation to safety and anergic services; and
- (i) ensure that an appropriate amount of radio frequency spectrum is available for government as well as non-government use.

Sale of radio
transmitter

48. (1) A person shall not sell, or otherwise dispose of, to any person who has not been issued a licence under this Part, a radio transmitter, whether or not it is assembled.

(2) The onus shall lie on a person who deals in or sells radio communication equipment to ensure that any person who intends to buy or lease such equipment from him or her has been granted a licence under this Part.

(3) Any person who contravenes this section commits an offence and is liable to a fine of not less than P10 000 but not more than P500 000, or to imprisonment for a term of not less than one year but not more than five years, or to both.

Radio receiver
and transmitter
disturbances

49. (1) A licensee under this Part shall ensure that any radio transmitter or receiver used or operated by him or her does not disturb or interfere with the use of another radio transmitter or receiver, and shall, where such disturbance or interference occurs and he or she is so requested by any person, ensure that the disturbance ceases or is reduced to the extent possible.

(2) Any person who contravenes subsection (1) commits an offence and is liable to —

- (a) in the case of an individual, a fine of not less than P1 000 but not more than P50 000, or to imprisonment for a term not exceeding four years, or to both; and
- (b) in the case of a corporation, a fine of not less than P10 000 but not more than P2 000 000.

C. MISCELLANEOUS PROVISIONS

Liability of service
providers

50. (1) A person who —

- (a) operates a telecommunications or radio system;
- (b) provides a telecommunications service;
- (c) supplies terminal equipment or radio equipment;
- (d) undertakes the maintenance or repair of telecommunications or radio equipment;
- (e) operates a broadcasting system or equipment; or
- (f) operates postal equipment,

shall ensure that the system or equipment he or she operates, provides, supplies, maintains or repairs is safe in order to ensure the protection of consumers and users of such service or equipment against injury.

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine of not less than P10 000 but not more than P2 000 000, or to imprisonment for a term of not less than one year but not more than 10 years, or to both.

(3) A regulated supplier shall maintain a register of its customers or subscribers in such manner as the Minister may prescribe and provide information to the Authority or such other person as the Authority may designate.

(4) Any customer, subscriber or person who fails to furnish the supplier, service provider or licensee in the regulated sectors with any information as may be prescribed by the Minister in terms of subsection (3) commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a period not exceeding 12 months, or to both; and where a body corporate contravenes subsection (3) the Authority may impose a civil penalty which shall not exceed 10 per cent of the net turnover of the business in the previous financial year and where such corporation was not trading in the previous year, the current net turn over.

(5) The information obtained under subsection (4) shall be —

(a) made available to the Authority upon written request by the Authority; and

(b) kept in the manner prescribed by the Minister in regulations.

(6) A person who contravenes this section shall be liable —

(a) in the case of an individual, to a civil penalty not exceeding P50 000 to be imposed by the Authority; and

(b) in the case of a body corporate, to a civil penalty not exceeding 10 per cent of the net turnover of the body corporate in the previous financial year.

51. (1) Where a telecommunications system operator or telecommunications service provider believes that it is necessary, in order for him or her to be able to provide any service, to connect his or her system or equipment to the network, system, or equipment of another telecommunications network, system, or to other telecommunications equipment he or she shall seek the consent, in writing, of the operator or provider of that network, system or equipment to so connect his or her system or equipment.

(2) Where the consent referred to in subsection (1) is obtained by the telecommunications system operator or telecommunications service provider, such telecommunications system operator or telecommunications service provider —

(a) shall file such interconnection agreement within such period as may be set by the Authority; and

(b) may, in applying for a licence under this Part, seek the authorisation of the Board to connect the system or equipment to the operator or provider referred to in subsection (1), and shall forward, to the Board, a copy of the document giving such consent.

(3) An interconnection agreement submitted to the Authority in terms of subsection (2) shall be accompanied by a summary of its principal terms and interconnection charges.

(4) Where the Authority is not satisfied that the requirements of the interconnection agreement have been complied with, the Authority shall propose any changes after receipt of the interconnection agreement.

Network
interconnec-
tions

(5) Where the Authority is satisfied that the provisions of subsections (1) and (2) have been complied with, it may specify, on the licence it issues, that the licensee is authorised to connect his or her telecommunications system or equipment to such other telecommunications network, system or equipment as it may designate in the licence, being the system or equipment in respect of which consent has been obtained.

(6) No connection referred to in this section shall be made by any person unless he or she has complied with the provisions of this section.

(7) Where a dispute arises relating to —

(a) any technical conditions stipulated by the operator or provider of the telecommunications equipment, network or system; or

(b) the reasonableness of the interconnection charge,

the parties shall refer the dispute to the Authority which shall have the power to decide on the matter and set down such terms and conditions for the interconnection as seem fair and reasonable to the Authority.

(8) The interconnection charge or cost of using such designated network, system, or equipment shall be as agreed between the licensee and the operator of the designated network, system, or equipment; and that charge or cost shall be fair and reasonable in relation to the service to be provided by the licensee, and to the additional costs that may accrue to the operator of the designated network, system, or equipment as a result of the connection.

(9) Where parties do not agree on the interconnection charge or the cost of using designated network systems or equipment under subsection (1), the parties may request the Authority to determine terms of interconnection.

Compensation
for loss or
damage

52. In the execution of works or interference with property, a telecommunications operator or service provider 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 persons who have sustained loss or damage for all loss or damage sustained by them by reason or in consequence of the performance of such works.

Emergency
conditions

53. (1) The Authority may, during any emergency, require any service provider to give priority to the transmission of the messages of Government or of any person, and to intercept messages transmitted under such circumstances.

(2) Any service provider who does not comply with the provisions of subsection (1) commits an offence and is liable to a fine of not less than P10 000 but not more than P50 000, or to imprisonment for a term of not less than one year but not more than four years, or to both.

Confidentiality
of transmitted
messages

54. (1) A person who is engaged in the operation of a public telecommunications system or the provision of a telecommunications service who, otherwise than in the course of his or her duty, intentionally or negligently —

(a) intercepts a message sent by means of that system or through that service;

(b) discloses, to any person the contents of such message;

(c) discloses, to any person, information about a customer obtained in the course of performing his or her duty; or

(d) uses any information obtained in the course of his or her duties about a customer for his or her own benefit,
 commits an offence and is liable to a fine of not less than P10 000 but not more than P50 000 or to imprisonment for a term of not less than one year but not more than four years, or to both.

(2) Subsection (1) shall not apply to the disclosure of information made in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings.

(3) A person engaged in the operation of a public telecommunications system or the provision of a telecommunications service who, otherwise than in the course of his or her duty, intentionally or negligently modifies or otherwise interferes with the contents of a message sent by means of that system or through that service commits an offence and is liable to a fine of not less than P10 000 but not more than P50 000, or to imprisonment for a term of not less than one year but not more than four years, or to both.

55. A person who —

(a) sends, by means of a public telecommunications system, a message or other matter which is offensive or of an indecent, obscene or menacing character; or

(b) sends, by public telecommunications system, for the purpose of causing annoyance, inconvenience or anxiety to another person, a message which he or she knows to be false, or persistently makes use, for that purpose, of a public telecommunications system,

commits an offence and is liable to a fine of not less than P10 000 but not more than P50 000, or to imprisonment for a term of not less than one year but not more than four years, or to both.

56. Any person who —

(a) wilfully interferes with, hinders or impedes in any way the erection, alteration, maintenance or inspection of any telecommunications or broadcasting equipment;

(b) without lawful excuse, by any means interferes with or obstructs the provision or operation of a telecommunications, broadcasting or postal service;

(c) steals any telecommunications, broadcasting or postal equipment; or

(d) wilfully and unlawfully damages or destroys any telecommunications, broadcasting or postal equipment, or does any act with intent to, or knowing that it is likely that such act will impair the usefulness or efficiency or prevent or impede the working of, any such equipment,

commits an offence and is liable to a fine of not less than P50 000 but not more than P1 000 000, or to imprisonment for a term of not less than four years but not more than seven years, or to both.

Improper use of
 public
 telecommunica-
 tions system

Offences

PART VIII – *Postal Services*A. *TRANSMISSION OF POSTAL ITEMS*

Requirement
for licence

57. A person shall not provide a postal service, unless he has been granted a valid licence to do so under this Act.

Operators to issue
general
conditions for
provision of
services

58. (1) A postal operator shall issue, in writing, general conditions subject to which it shall provide postal services.

(2) Postal services shall be provided on the basis of an agreement, under which a postal operator shall undertake to convey the postal item to the addressee under its general conditions and the sender shall undertake to pay the postal charge according to the applicable tariff.

(3) The agreement shall be deemed to be concluded when the postal item has been collected by the addressee and the postal charge paid.

Rights and duties
of parties to
agreement

59. (1) The rights and duties of the parties to the agreement shall be as provided for by the general conditions and in this Act.

(2) The general conditions issued by postal operators shall conform with the provisions of this Act and any other applicable legislation and shall include —

- (a) the content of the services;
- (b) quality standards;
- (c) the applicable tariffs; and
- (d) the procedure for handling disputes and complaints.

(3) A postal operator shall bring its general conditions to the notice of the postal consumer in a form available free of charge or in such a manner as may be specified or approved by the Authority.

(4) The general conditions of the public postal operator shall —

- (a) conform with the relevant UPU-Acts where they concern the conveyance of cross-border mail which is part of universal postal services; and
- (b) apply to the provision of postal money orders.

(5) A postal operator which provides reserved postal services in terms of this Act shall be liable to a civil penalty not less than P10 000 but not more than P500 000 to be imposed by the Authority.

Refusal to
conclude
agreement

60. Without prejudice to other rights of a postal operator under this or any other Act, a postal operator may refuse to conclude an agreement where —

- (a) the sender refuses to pay the applicable tariff;
- (b) the postal item does not have a proper address for delivery of the postal item;
- (c) the postal item exceeds the weight and the limit permitted by the general conditions and in this Act;
- (d) the postal item contains prohibited items in terms of this Act or any other applicable law; and
- (e) the postal item fails to meet the respective requirements under the UPU-Acts as far as applicable to that postal item.

61. Notwithstanding the provisions of this Part, a public postal operator may —

Special
contracts for
public postal
operator

- (a) conclude special contracts, in the framework of the provision of the universal postal services, with high volume postal customers, provided however that these contracts shall be on a transparent and a non-discriminatory basis for the same services;
- (b) conclude special contracts, in the framework of the provision of the universal postal services, with postal customers delivering postal items to be conveyed on the basis of pre-sorting where these contracts are on a transparent and non-discriminatory basis; and
- (c) provide interconnection services different from the services provided for in this Act to postal operators on a transparent and a non-discriminatory basis.

62. (1) No person shall insert in a postal item to be conveyed by a postal operator —

Prohibited items

- (a) dangerous or hazardous substances or materials;
- (b) arms, ammunition, explosives or inflammable material;
- (c) biological material or related matters;
- (d) obscene or articles with immoral content;
- (e) coins, banknotes, currency notes, cheques, or other articles of value, unless these postal items are conveyed as a registered postal item in combination with insured conveyance by the public postal operator or by a postal operator offering comparable services; or
- (f) any other thing as the Board may determine.

(2) If a postal operator suspects that a prohibited item, substance or article has been inserted into any postal item, the postal operator may, upon collecting such postal item, substance or article request the sender's consent to conduct an inspection of such postal item substance or article.

(3) Where the sender refuses to consent under subsection (2), the postal item concerned shall be excluded from any further conveyance.

(4) Any person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine of not more than P100 000, or imprisonment for a period not exceeding seven years, or to both.

63. (1) A postal item shall be considered as under conveyance from the time of its collection by a postal operator to its delivery to the addressee.

Conveyance
and delivery

(2) For the purposes of subsection (1) delivery to the addressee shall be considered to have taken place —

- (a) through the handing over of the postal item to the addressee in person or to his representative; or
- (b) through the placing of the postal item in or at the respective P.O. Box, postal address or Private Bag.

(3) A postal item shall be considered as undeliverable if —

- (a) the addressee has refused to accept it;
- (b) the addressee has not taken delivery of the postal item within the applicable period of retention as set out in the general conditions; or
- (c) the address of the addressee on the postal item is incomplete, inaccurate or illegible.

(4) Notwithstanding subsection (3) (a), a postal item that already has been opened by the addressee may not be refused and if refused, shall be considered to have been delivered.

(5) A postal item that cannot be delivered to the addressee under subsection (3) shall be redirected to the sender free of charge, unless —

- (a) the sender is unknown;
- (b) the address of the sender is incomplete, inaccurate or illegible; or
- (c) the sender refuses to accept the postal item.

(6) Where a postal item can not be redirected to the sender under subsection (5), a postal operator shall store such postal item for a period of time to be set out in the general conditions and after the expiry of that period the postal operator may destroy the concerned postal item.

Opening of
items

64. (1) Notwithstanding section 62 (1), any postal item, not being an item of correspondence, may be opened by a postal operator for examination to determine the identity of the sender where the postal item cannot be delivered to the addressee and requires to be redirected to the sender, but the address of the sender is unknown.

(2) A postal operator shall comply with such rules of procedure as the Minister may prescribe in the exercise of the power to open postal items under this section.

Complaints
Framework

65. (1) A postal operator shall develop frameworks for addressing complaints (referred to in this Act as "Complaints Framework"), which shall include —

- (a) details of the extent of the sender's right to complain about the content and the quality of the services provided; and
- (b) the procedure for making complaints.

(2) A postal operator shall submit its Complaints Framework to the Authority for approval before implementing such Complaints Framework.

Postal operator's
annual report

66. A postal operator, not being the public postal operator, shall within a period of three months after the end of its financial year or such longer period as the Authority may approve, submit to the Authority a report containing information about the scope of its services, its postal network, development of its services, handling of complaints, number of solved and unsolved complaints and any further item of interest for the postal sector planning with respect to such year.

B. PUBLIC POSTAL OPERATOR, UNIVERSAL POSTAL SERVICES, RESERVED POSTAL SERVICES AND COMMERCIAL POSTAL SERVICES

Public postal
operator

67. (1) The Minister shall, on the recommendation of the Authority and by order published in the *Gazette*, designate such postal operator as in his opinion is capable of providing universal postal services as a public postal operator.

(2) The Authority shall issue a licence to the postal operator designated under subsection (1) under such conditions as may be set by the Minister in consultation with the Authority.

Universal postal
services

68. (1) The public postal operator shall provide the following services, which shall comprise universal postal services —

- (a) the conveyance of domestic and cross-border items of correspondence of up to a weight of 100 grams and postal packages to be delivered through a P.O. Box;
- (b) the conveyance of domestic and cross-border postal parcels up to a weight of 20 kilograms;
- (c) the provision of postal money orders in accordance with UPU-Acts;
- (d) the provision of special services such as registered postal items and insured postal items;
- (e) the provision of P.O. Boxes in communities, where feasible;
- (f) the handling of cecogrammes with a maximum weight of seven kilograms free of charge;
- (g) the issuing of stamps bearing the word "Botswana" or imprinted with an effigy of the Head of State of Botswana;
- (h) the mail exchange with an average frequency of five times a week, or every working day not being a public holiday;
- (i) the placing of street letter boxes for mail collection; or
- (j) the delivery of judicial documents.

(2) Notwithstanding any obligations imposed on a public postal operator under and by this Act or any other law, the public postal operator shall —

- (a) provide detailed and up-to-date information about the scope, content, tariffs and quality standards of the universal postal services;
- (b) install a sufficient number of postal service points and P.O. Boxes in accordance with the quality standards as prescribed by the Minister;
- (c) provide interconnections services, on a transparent and non-discriminatory basis, to postal operators, subject to feasibility and in accordance with regulations prescribed by the Minister;
- (d) keep separate accounts for the universal postal services and the commercial postal services in accordance with the principles of cost accounting that meets the requirements as prescribed by the Minister; and
- (e) comply with the UPU-Acts.

(3) The public postal operator shall provide the services as referred to in subsection (1) on a cost based-plus tariff.

69. A public postal operator shall assign to each postal consumer, a postal address at a date and upon conditions to be determined by the Minister.

Assignment of
postal address

70. A public postal operator, shall within three months of the end of its financial year or such longer period as the Authority may approve, submit an annual report to the Authority in respect of the provision of the universal postal services which report shall address —

Annual report
by public
postal operator

- (a) an overview of the development of the volumes of the universal postal services in terms of domestic and cross-border items of correspondence, postal parcels, special services such as registered postal items and insured postal items, postal money orders, the development of improved or new services and expectations on developments of mail volumes;

- (b) the development of the postal network used for the universal postal services in terms of an overview of the number of postal service points, categories of postal service points coverage of postal service points in relation to the number of postal consumers served, number of P.O. Boxes per postal service point, number of individuals or households served by a P.O. Box or a postal address, number of government institutions and business entities served by a P.O. Box, overview of the postal network in terms of frequency of transport routes and types of postal service points connected;
- (c) the development of the quality of the universal postal services in terms of information on the quality measurement system for these services, quality of services results, divided into intra-city, inter-city, national mail and the efforts to improve the quality of the universal postal services;
- (d) the development of costs of the universal postal services in terms of information on the cost accounting system of the universal postal services, results of the cost accounting system of these services, information on the developments of costs categories, the proposed adaptation of the tariffs for single mail items, an overview of the financial instruments used for large volume postal customers, such as pre-sorting discounts;
- (e) the use of the universal postal services in terms of categories of postal mail use per category of postal consumer and complaints made by postal consumers; and
- (f) interconnection services in terms of type of interconnection agreements, the specific elements of these agreements and issues related thereto.

Reserved postal
services

71. (1) Reserved postal services are reserved for the public postal operator and relate to the following parts of the universal postal services —

- (a) the conveyance of domestic and cross-border items of correspondence of up to a weight of 100 grams and delivered through a P.O. Box;
- (b) the conveyance of cross-border mail conveyed through the UPU mail exchange system;
- (c) subject to subsection (5), the provision of P.O. Boxes in communities with at least 5000 inhabitants;
- (d) the issuing of stamps bearing the word “Botswana” or imprinted with the effigy of the Head of State of Botswana; and
- (e) the placing of street letter boxes for mail collection.

(2) Subject to subsection (5) no person, other than a public postal operator, shall provide reserved postal services under subsection (1) except for the self-delivery of postal services.

(3) Any person who contravenes the provisions of subsection (2) commits an offence and is liable to a fine of not more than P20 000, or to imprisonment for a term not exceeding 12 months, or to both.

(4) The Minister may direct the Authority to grant such postal operator as he may specify in his written direction, an exemption from the provisions of subsection (2) with respect to the delivery of mail at P.O. Boxes at operations of the concerned postal operator.

(5) The Authority may attach special terms and conditions, it considers necessary, for the proper implementation of the Minister directions issued under subsection (4).

72. (1) A licensed postal operator including the public postal operator shall be entitled to provide commercial postal services throughout Botswana.

Commercial
postal services

(2) For purposes of this section, "commercial postal services" includes the following postal services —

- (a) the conveyance of addressed mail not delivered through a P.O. Box but delivered directly to the addressee as a value added service;
- (b) the conveyance of advertising mail;
- (c) the conveyance of incoming cross-border mail not to be delivered to a P.O. Box;
- (d) the conveyance of postal packages and postal parcels;
- (e) express and courier postal services delivered directly to the addressee as a value added services, supplemental including extra services such as bar-coding, tracking and tracing, insured terms and guarantees on delivery; and
- (f) all other value added postal services not being part of the universal postal services and the reserved postal services, such as pre-mailing services.

C. POSTAL CONFIDENTIALITY

73. The liability of the public postal operator to the sender for loss or damage arising out of the provision of the universal postal services shall, subject to the provisions of the UPU-Acts and of this Act, be limited as follows —

Limitation of
liability

- (a) in respect of the conveyance of a domestic registered postal item, such amount as the Minister may determine from time to time;
- (b) in respect of the conveyance of a domestic registered postal item in combination with insured conveyance, an amount not exceeding the amount as specified by the sender at the time of the conclusion of the agreement up to a maximum amount as the Minister may determine from time to time;
- (c) in respect of the conveyance of a domestic insured postal item, an amount not exceeding the amount as specified by the sender at the time of the conclusion of the agreement up to a maximum amount as the Minister may determine;
- (d) in respect of the conveyance of a cross border registered postal item, such amount as the Minister may determine from time to time; and
- (e) in respect of the conveyance of a cross-border registered postal item in combination with insured conveyance, an amount not exceeding the amount as specified by the sender at the time of conclusion of the agreement, up to a maximum amount allowed by the country of destination.

74. (1) A sender shall not be entitled to damages or compensation if the loss or damage is the result of the nature or a defect in the content of the postal item itself, inadequate packing of the postal item, an incorrect or incomplete address or any other cause attributable to the sender, or during a national emergency.

Exclusion of
liability

(2) A public postal operator shall not be liable for any loss or damage with regard to the provision of the universal postal services except as provided for under this Part.

Claims for compensation

75. (1) A claim for compensation shall only be dealt with if the sender can produce the original proof of posting or the sender is able to prove that such postal item has been posted.

(2) A public postal operator shall provide the sender with a signed receipt when the sender submits the original proof of posting.

(3) A claim for compensation as referred to in subsection (1) shall only be dealt with if the sender has submitted such claim to the public postal operator —

- (a) in respect of the loss of a domestic registered postal item, within three months from the date of posting; and
- (b) in respect of the loss of across border registered postal item, within six months from the date of posting.

Lost postal item

76. (1) A domestic postal item will be deemed to have been lost if it has not been delivered and has not been found within six months of the date of posting.

(2) An international postal item conveyed through the UPU system, will be considered to be lost if it has not been delivered and has not been found within a period of six months of the date of posting.

(3) A postal item which is found after compensation has been paid for its loss shall be returned to the sender or the addressee upon repayment of the compensation, if either the sender or the addressee demands its return within a period of 30 days from the date of being notified that the postal item has been found.

Liability of sender

77. (1) A sender shall be liable to the public postal operator for any damage which his postal item, may cause to employees or equipment of the public postal operator or to other postal items, where the sender has failed to exercise reasonable care to prevent the damage.

(2) Where the damage has been caused to the equipment of the public postal operator as contemplated in subsection (1), the liability of the sender shall be limited to the compensation that the public postal operator would have been liable to pay to the sender of that postal item were the public postal operator held to be liable with respect to the concerned item.

PART IX – *Dispute Resolution*

Authority's duty to resolve disputes

78. (1) The Authority shall resolve any dispute that is referred to it and which arises between —

- (a) regulated suppliers which concerns the provision of any regulated goods or service; or
- (b) a consumer or user of any regulated service and the regulated supplier providing that regulated service which concerns any regulated goods or service.

(2) The Authority may use such means to resolve disputes as it thinks proper, including negotiation, mediation, arbitration, the receipt and consideration of documents and oral hearings or other alternative dispute resolution methods.

(3) The Authority may resolve the dispute either by itself or act in concert with any third party.

(4) The Authority shall not be required to resolve any dispute —

- (a) which appears to it to be frivolous or vexatious;
- (b) where the complainant appears to have no interest in the matter to which the dispute relates;
- (c) where it appears that any procedure for resolving disputes agreed between both parties has not been followed to completion by any party;
- (d) where, in the absence of any procedure contemplated by subsection (4) (c), the Authority believes that the regulated supplier of the goods or service has not adequately considered the complaint made by the consumer or user, and in such case shall refer the complaint to such regulated supplier for resolution;
- (e) which relates to any personal injury or death of a consumer or user which arises from the provision to that person of the services provided by that regulated supplier; or
- (f) which concerns a debt properly due to the regulated supplier by the consumer or user and there exist no reasons why it should not be paid.

(5) The Authority or any third party retained by the Authority in accordance with subsection (3) may make —

- (a) any arbitration award which may properly be made in arbitration proceedings;
- (b) any award other than in arbitration proceedings, if the parties to the dispute request the Authority to resolve the dispute and make an award; or
- (c) such award in respect of the costs of resolving the dispute as it shall consider proper.

(6) The Authority shall make rules for the timing and conduct of the hearing of all disputes and if any party fails to follow such rules, the Authority may dismiss the complaint.

(7) The Authority shall conduct the hearing within 60 days from receipt of all relevant documents and such oral evidence as it shall require if no time periods are laid down for the purposes of subsection (6).

(8) All decisions of the Authority shall be in writing and shall take into account all relevant facts and law.

(9) The Authority shall publish its decision in such manner as it considers appropriate for bringing it to the attention of those likely to be affected by it, including a summary of the reasoning for the decision.

79. Any person aggrieved by the decision of the Authority may appeal to the High Court.

Appeal to the
High Court

PART X – Consumer and User Affairs

80. (1) The Authority shall —

- (a) carry out such research as it may determine from time to time to establish, and to update itself on the state of public opinion and consumer experiences with respect to the services provided by the regulated suppliers;
- (b) publish the results of the research carried out under subparagraph (1) (a);

Authority's
duties to
consumers

- (c) consider and take account of the results of such research when carrying out its functions;
 - (d) establish and maintain effective arrangements for consultation about the carrying out of its functions with the consumers and users of regulated services; and
 - (e) establish the nature and type of advice which will be sought from the Advisory Panel, and to communicate this to the Advisory Panel members.
- (2) The Authority shall inform the Advisory Panel in writing, giving its reasons where the Authority disagrees with, or declines to accept, any particular advice offered by the Advisory Panel.
- (3) The Advisory Panel shall provide a written report to the Authority at the end of each financial year, setting out in full the details of its activities during the previous twelve months and the report shall be included by the Authority in its annual report.
- (4) The Authority shall provide at its own expense, such secretarial and other assistance as each Advisory Panel shall require in order to fulfil its functions.
- (5) The Authority shall not publish any matter that relates —
- (a) specifically to the affairs of a particular body and where publication would be seriously detrimental to the interests of that body; or
 - (b) to the private affairs of an individual, where publication would be seriously detrimental to the interests of that person.
- 81.** (1) The Authority may establish Advisory Panels which shall consist of members appointed by the Authority.
- (2) The Authority shall —
- (a) place advertisements seeking potential members of the Advisory Panel in national newspapers and also advertise on television and radio;
 - (b) publish in the *Gazette* the names of all persons who have applied or been recommended for membership of the Advisory Panel, and call for comments, objections or representations from the general public by a specified date; and
 - (c) take into account all comments, objections and representations when making the appointments.
- (3) Members of the Advisory Panel shall be appointed by the Authority and the panel members shall elect one of their number to be the Chairperson of the Advisory Panel and communicate the name of such chairperson to the Authority.
- (4) The Authority shall appoint the best qualified persons to each Advisory Panel and shall so far as is practicable ensure that —
- (a) the membership of the Advisory Panel is spread across Botswana;
 - (b) each member is able to give advice, on —
 - (i) the interests of persons living in rural areas,
 - (ii) the interests of persons living in urban areas,
 - (iii) the interests of industry, commerce and small and medium size businesses, or
 - (iv) the interests of disadvantaged persons, especially persons with low incomes, persons with disabilities, the elderly, youth or women; and

- (c) a member shall be of good character and no person who is an employee of the Authority or who falls within sections 11 (1) (a) and 11(1) (b) shall be appointed to the Advisory Panel.
- (5) A member of the Advisory Panel —
 - (a) shall serve in that capacity for a period specified in the terms of his or her appointment;
 - (b) may resign his or her position at any time by written notice to the Authority; or
 - (c) may at any time be removed from the Advisory Panel by a written notice given by the Chairperson of the Board for reasonable cause.
- (6) The Authority shall, in the case of subsections (5) (b) and (5) (c), appoint a replacement member to the Advisory Panel in accordance with the provisions of subsection (1).

(7) The Authority shall make available out of its annual budget such sums as are necessary for the efficient conduct by each Advisory Panel of its work and for the remuneration, allowances and expenses of the members of the Advisory Panel.

82. (1) An Advisory Panel may make such arrangements as they think fit for the purposes of providing advice to the Authority, including forming committees.

(2) The Authority shall approve the procedures which the Advisory Panel may make for regulating its own procedure, and for regulating the procedure of any committee it may establish.

(3) The membership of a committee established by the Advisory Panel may include persons who are not members of the Advisory Panel but shall include at least one person who is a member of the Advisory Panel.

(4) The Authority shall pay such remuneration and expenses as the Authority shall determine to persons who are members of Advisory Panel committees but who are not members of the Advisory Panel.

(5) The Chairperson of the Advisory Panel shall —

- (a) keep proper books of account setting out the income received from the Authority and the expenses incurred in the conduct of its work; and
- (b) provide an account to the Authority in respect of the expenditure of such sums appropriated to it under section 62 (7) at the time of the Authority's annual audit.

PART XI – General

83. (1) An applicant may make a written application to the Board to vary the terms and conditions of his or her licence and the Board may accede to the request subject to such terms and conditions as the Board thinks necessary.

(2) Subject to subsections (4), (5) and (6), the Board may suspend a licence where it is satisfied that —

- (a) the applicant has contravened this Act or a term or condition of such licence;

Meetings and
responsibilities
of Advisory
Panel

Variation or
suspension of
licence

- (b) the applicant has ceased to operate under the certificate of registration;
- (c) the applicant gave information to the Board which is false or misleading in a material particular, at the time of applying for a certificate of registration; or
- (d) it is in the public interest to do so.

(3) Subject to subsections (4), (6) and (7), the Board may vary the terms and conditions of a licence for reasons specified under subsection (2) (a), (c) and (d).

(4) Where the Board proposes to suspend or vary the terms of a licence pursuant to subsections (2) and (3), the Board shall give written notice of its intention to do so to the applicant, and the reasons therefor.

(5) The Board shall, in a notice under subsection (4), require the applicant to show cause in writing, within such time as may be specified in the notice, as to why the licence should not be suspended or varied.

(6) The Board shall, after considering the explanations of the applicant, make a decision and inform him or her in writing of such decision and the reasons therefor.

(7) Where the urgency of the matter so requires, the Board may immediately suspend a licence on any ground specified in subsection (2).

(8) Where a licence is suspended, the applicant shall take such steps as may be directed by the Board.

Type approval
of equipment

84. (1) The Minister may make regulations specifying the types of telecommunications equipment which may be used for providing a telecommunications service, for operating or connecting to, a telecommunications system, or for terminal equipment (referred to in this Part as "type approval").

(2) A person who provides a telecommunications service or supplies telecommunications equipment shall not use any telecommunications equipment which has not been type approved by the Authority and no person shall connect, to any telecommunications system, any telecommunications equipment which has not been type approved.

(3) The Authority may type approve any telecommunications equipment by reference to a type approval used in another country.

(4) Except where the Authority otherwise directs, every telecommunications equipment used in or connected to a telecommunications system or network within Botswana shall be marked as being of a type approved for use in Botswana.

(5) The Authority shall maintain a register of type approvals which shall be open to inspection by the public.

(6) Any person who contravenes subsection (2) commits an offence and is liable to a fine of not less than P10 000 but not more than P2 000 000, or to imprisonment for a term of not less than one year but not more than 10 years, or to both.

Type approval

85. (1) A person who provides a broadcasting or postal service or supplies equipment shall not use such equipment unless it has been type approved by the Authority and no person shall connect to any broadcasting or postal system or equipment which has not been type approved.

(2) A person who contravenes subsection (1) is liable to a civil penalty to be imposed by the Authority.

(3) The Minister may make regulations specifying the types of broadcasting and postal equipment which may be used for providing service in the regulated sector.

86. (1) Where any licensee contravenes any provision of this Act, or fails to comply with any lawful direction or requirement of the Authority under the provisions of this Act, or where the Authority is satisfied that the conditions of any licence are not being adhered to, the Authority may revoke, suspend or impose further conditions upon such licensee and shall publish a notice of such revocation, suspension or imposition in two consecutive issues of the *Gazette* and two newspapers circulating in Botswana.

Revocation of
licences

(2) No revocation, suspension or imposition of further conditions upon a licensee shall be made until the person concerned has by notice in writing been given the opportunity by the Authority to rectify the contravention or failure, or to show cause within such time as may be specified, not being less than 14 days from the date of such notice, why the licence should not be revoked, suspended or have further conditions imposed thereon.

87. The Authority shall cause to be published, in the *Gazette*, the issue of a licence by the Board, except for the grant of a radio licence.

Publication of
licences granted

88. (1) Any reference in this Act to the liability and imposition of a civil penalty which has not been specifically provided for shall —

Civil penalties

(a) in the case of an individual, attract a civil penalty not exceeding P50 000; or

(b) in the case of a body corporate, attract a civil penalty not exceeding 10 per cent of the net turnover of the body corporate for the previous financial year and where no net turnover for the previous financial year exists, 10 per cent of the gross revenue for the period of existence shall be used to determine the quantum of the civil penalty; and where a corporation was not trading in the previous year, the current net turn over shall be used.

(2) In making a determination for the imposition of a civil penalty in terms of this Act the Authority shall consider —

(a) any representations made to them by the notified provider;

(b) any steps taken by him or her towards complying with the conditions contraventions of which have been notified to the notified provider; and

(c) any steps taken by him or her for remedying the consequences of those contraventions.

89. The Board shall refer all issues relating to competition which may arise in the course of the discharge of its functions to the Competition Commission established under the Competition Act.

Competition

90. (1) The Authority —

Fixing tariffs

(a) shall notify the Minister prior to publishing in the *Gazette* the principles established by it and to be applied in the setting of tariffs and other charges including price caps or other price controls, for different classes or categories of services or products and for different areas for the regulated sectors;

(b) shall notwithstanding subparagraph (a), not impose any limitations on the service providers required to provide universal services to develop commercial services, except where such limitations are pursuant to a direction of the Minister; and

(c) may set tariffs or other charges including price caps or other price controls, for different classes or categories of services or products and for different areas for the regulated sectors.

(2) A licenced service provider or supplier of a service or a product in a regulated sector shall submit a proposal in writing to the Authority in respect of the tariff which it intends to apply for the different services and or products.

(3) The Authority shall, within 60 days of its receipt of any proposal made under subsection (2), either approve the tariff proposed, or make a counter-proposal; and any failure of the Authority to respond to a proposal shall entitle the person so making the proposal to impose the tariff proposed.

(4) Where the service provider or supplier of a product does not accept the counter proposal made to it by the Authority, and it is unable to reach agreement with the Authority on the matter, it may appeal to the Minister.

(5) A licensed service provider or supplier shall make its tariffs available to the public.

(6) Any person who contravenes subsection (5) is liable to a civil penalty to be imposed by the Authority.

(7) 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.

(8) Where the Authority approves any tariff under this section, any service provider or supplier who exceeds such tariff is liable to a civil penalty not exceeding P50 000 to be imposed by the Authority.

Powers of Minister

91. (1) The Minister shall rescind any decision of the Authority if it appears to the Minister that the security of Botswana or relations with a foreign government may be adversely affected.

(2) The Minister shall consult the Authority and shall take into account the views of the Authority before he or she exercises the power under subsection (1).

(3) The Minister may by order published in the *Gazette*, amend the Schedules to this Act.

Indemnity

92. No matter or thing done or omitted to be done by a member or staff of the Board shall, if the matter or thing is done or omitted to be done bona fide in the course of the operations of the Board, render a member or staff personally liable to an action, claim or demand.

Offences and penalties

93. (1) A person who in connection with an application for a licence or other authorisation or determination as may be made by the Authority —

(a) makes a statement to the Authority;

(b) gives information or produces a document to the Authority; or

- (c) authorises or knowingly allows another person to make a statement to the Authority, or give information or produce a document to the Authority,

or omits to state anything, knowing or reasonably ought to have known that, because of the omission, the statement, information, or application is misleading in a material respect or is false in a material respect shall be liable to a civil penalty not exceeding P30,000 to be imposed by the Authority.

(2) Where a person charged with an offence under this Act is a body corporate, every person who, at the time of the commission of the offence was a director, manager or officer of the body corporate may be charged jointly in the same proceedings with such body corporate and where the body corporate is convicted of the offence, every such director, manager or officer of the body corporate shall be deemed to be guilty of that offence unless he or she proves that the offence was committed without his or her knowledge or that he exercised all due diligence to prevent the commission of the offence.

(3) For the purposes of this section, any partner of a firm shall be jointly and severally liable for the acts or omissions of any other partner of the same firm done or omitted to be done in the course of the firm's business.

(4) Any person who —

- (a) wilfully interferes with, hinders or impedes in any way the erection, alteration, maintenance or inspection of any facility or equipment used for or any way associated with the provision of postal services;
- (b) without lawful excuse interferes with or obstructs the provision of any postal services;
- (c) steals any postal item or item of correspondence;
- (d) wilfully or unlawfully damages or destroys any postal equipment, product or facility used for the provision of postal services, or does any act with intent to, or knowing that it is likely that such act will impair the usefulness or efficiency or prevent or impede the working of any such equipment, product or facility or generally hinder or impede the provision of postal services,

commits an offence and is liable to a fine of not less than P2 000 but not more than P50 000, or for imprisonment for a term not exceeding three years, or to both.

94. (1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

Regulations

(2) Notwithstanding the generality of subsection (1), the Minister may make regulations —

- (a) for levies and fees payable to the Authority; and
- (b) exempting from the provisions of this Act noxious or deleterious matter sent in the interests of public health or order in accordance with such requirements as may be prescribed.

Repeal of Cap.
72.03

95. (1) The Telecommunications Act is hereby repealed.

(2) All real property which, immediately before the coming into operation of this Act, vested in the Telecommunications Authority shall, on the coming into operation of this Act, vest in the Authority.

(3) All other assets, rights, liabilities and obligations which vested in the Telecommunications Authority prior to the date this Act comes into operation are hereby transferred to the Authority.

(4) No tax or charge relating to the transfer of real property shall be incurred by the Authority in carrying out the obligations under subsection (3).

(5) Any act done in the name of the Telecommunications Authority prior to the commencement of this Act shall be deemed to be done in the name of the Authority.

(6) Any application, proceedings or similar matter pending before the Telecommunications Authority at the date this Act comes into operation shall be dealt with by the Authority in accordance with the relevant legislation in force when the application was submitted or proceedings commenced.

(7) Any order ruling or direction made by the Telecommunications Authority immediately before the coming into operation of this Act shall be regarded as having been made or given by the Authority.

Savings

96. Notwithstanding the repeal effected under section 95 —

(a) all subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with this Act, continue in force as if made under this Act;

(b) any licence, permit or authorisation issued immediately before the commencement of this Act shall be deemed to have been issued under this Act and shall remain valid until its expiry date whereupon the holder of such licence, permit or authorisation shall apply under this Act for a new licence, permit or authorisation; and

(c) any matter that is in the course of being investigated, or that has been investigated, by the former bodies, but on which a report has not been made when this Act comes into force shall, subject to anything to the contrary under this Act, be taken up and continued by the Board, without further formality, as if it were, or had been, an investigation under this Act.

SCHEDULE

SCHEDULE I

(Section 8 (2))

The register which the Authority is required to maintain pursuant to section 7 shall contain the following information —

- (i) a copy and details of all licences, authorities, permits and permissions granted by the Authority.
- (ii) details of all licences, authorities, permits and permissions revoked by the Authority and a summary of the reason for such revocations.
- (iii) details of all licences, authorities, permits and permissions suspended by the Authority, a summary of the reasons for their suspension, and the period of time for which they are suspended.
- (iv) the names of the members of the Board for the time being, their business addresses and their dates of appointment.
- (v) details of any Board members, who have resigned or been dismissed from office, and the reasons for such dismissal.
- (vi) the name of the Chief Executive Officer and senior officers of the Authority and their business addresses.
- (vii) the names of the members of the Advisory Panels and Committees for the time being and details of how they may be contacted.
- (viii) copies of the current and historic accounts of the Authority, including the auditors' reports.
- (ix) copies of the current and historic annual reports of the Authority.
- (x) details of grants, contributions, donations and endowments received by the Authority, both in its current year and historically, together with names and addresses of the donors.
- (xi) details of any grants, contributions, donations and endowments returned by the Authority to the donor as being in contravention of section 24 (2).
- (xii) details of anticipated, current and historic meeting dates for the Board.
- (xiii) details of regulatory decisions taken by the Board, and the factual and legal basis for such decisions.
- (xiv) details of consultations being undertaken by the Authority, the nature of the consultations and the date by which representations must be made.
- (xv) details of disputes and complaints brought before the Authority by consumers and regulated suppliers, the action taken by the Authority and the result of that action.
- (xvi) details of any conflicts of interest that have been notified to the Board by Board members.
- (xvii) details of any legal action taken by the Board against current Board members.
- (xviii) a summary of the vision and strategic goals of the Authority.
- (xix) a summary of the Board's regulatory duties as set out in section 6.
- (xx) details of any investigations carried out under section 8 and the results of such investigations, including any recommendations made by the Authority.
- (xxi) details of every enforcement order and administrative fine levied on regulated suppliers, together with the reasons therefor and details of any appeal raised against the Order and the results of the appeal.
- (xxii) the results of research carried out by the Authority.
- (xxiii) utilisation of any resources such as numbering, frequency spectrum *etc.*

SCHEDULE II

(Section 28 (1))

CONTENTS OF THE ANNUAL REPORT OF THE AUTHORITY

The annual report of the Authority shall set out at least the following matters —

- (a) a summary of the five year strategic plan of the Board and progress made towards achieving that plan.
- (b) a review of the policy, commercial, legal, financial, market and technological developments which have occurred in the regulated sectors in the year covered by the report together with those which are expected to occur in the following year.
- (c) details of any administrative and personnel developments which have taken place within the Authority in the previous year, including staff numbers, salary payments, benefits, pensions, allowances and other employment costs.
- (d) details of licences and permits granted to persons, corporations and organisations which have entered the market since the previous annual report, their market sectors and those which have left the market and the reasons, if known, for their leaving.
- (e) details of all licences which have been amended, suspended or revoked or which have been terminated by the licence holder, or the Board, together with a summary of number of licences of different types in force throughout the year and a summary of the performance of those holding licences.
- (f) information about participation by the individual members of the Board in national and international activities concerning the regulated sectors.
- (g) information about any quality of service statistics which are required by this Act or are otherwise available to the Authority.
- (h) details of all legal proceedings (including mediations and arbitrations), and the results of these (including, where relevant, if these are continuing) which have been brought by or against the Authority, including the Board or individual members of the Board in the Appeals Committee or any court.
- (i) a summary of all disputes brought before the Board by regulated suppliers or members of the public and how these were determined by the Board.
- (j) details of any competition issues which have arisen and how these were resolved together with the sanctions that the Board has applied and any difficulties experienced by the Board in obtaining payment.
- (k) details of any controls imposed by the Board on dominant corporations or organisations in the regulated sectors, including, but not limited to the control of tariffs or tariff structures, which the Board has set or approved.
- (l) specific issues of importance concerning the regulated sectors which should be brought to the attention of the Minister and in particular but not limited to, matters pertaining to incidents that have been investigated by the Board where loss of life, serious personal injury or significant damage to property has occurred and the nature and extent of any investigations into licensees in the regulated sectors which have had to be held.

- (m) annual accounts, including the reports of the auditors, an audited balance sheet and statement of cash flow and income and expenditure drawn up as far as may be in accordance with the requirements of the Companies Act.
- (n) the report of the Advisory Panels constituted under section 81.
- (o) any other matter which the relevant Minister has directed on the Board, in writing, shall be included in the Annual Report.

PASSED by the National Assembly this 16th day of August, 2012.

BARBARA N. DITHAPO,
Clerk of the National Assembly.