

BOTSWANA POSTAL SERVICES (TRANSITION) ACT, 2014

No. 1



of 2014

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An Act to provide for the registration of Botswana Postal Services under the Companies Act, for its continued existence as if it had been incorporated under the Companies Act and for matters incidental thereto.

Date of Assent: 23.01.2014

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — Preliminary

Short title and commencement	1. This Act may be cited as the Botswana Postal Services (Transition) Act, 2014 and shall come into operation on such date as the Minister may, by Order published in the <i>Gazette</i> , appoint.
Interpretation	2. In this Act, unless the context otherwise requires —
Cap. 72:01	“Board” means the Board of the Botswana Postal Services established under the Botswana Postal Services Act;
Cap. 42:01	“Botswana Privatisation Asset Holding Proprietary (Limited)” means a company wholly owned by the Government of Botswana and established under the Companies Act whose objectives include to collect, receive and hold the portion of assets from privatised entities that are reserved for purposes of economic empowerment of the citizens of Botswana;
	“Company” means the Botswana Postal Services Limited as continued under section 3;
	“conversion date” means the date on which the Botswana Postal Services is registered as a company;
	“Employee Pension Fund” means the Botswana Postal Services Employee Pension Fund which is a contribution fund;
	“Post” means the Botswana Postal Services established under the Botswana Postal Services Act; and
	“Registrar” means the Registrar of Companies appointed as such under the Companies Act.

PART II — Registration, conversion and financial interest

Registration and continuation of Post	3. (1) The Post may apply to the Registrar in accordance with section 355 (4) of the Companies Act, to be registered as a public company limited by shares, and shall, upon registration, continue to exist as if it had been incorporated under that Act. (2) For the purposes of subsection (1), the Minister shall designate the amount of share capital with which the Company shall be registered and shall divide the share capital according to the number of shares to be issued. (3) The Minister shall sign the constitution or documents required to register the Post as a company. (4) The Company shall use “Botswana Postal Services Limited” as its company name and be legally designated as such for all purposes.
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4. (1) As of the conversion date, the financial interest of the Government in the Post shall be converted into —

Conversion
of financial
interest

(a) shares in the capital of the Company and loans against the Company;

(b) shares in the capital of the Company; or

(c) loans against the Company,

and held by the Minister, on behalf of the Republic of Botswana.

(2) As of the conversion date, the Minister may, with the concurrence of the Minister responsible for finance —

(a) acquire, hold or dispose of the financial interest of the Government in the Company;

(b) enter into any agreement or arrangement necessary or incidental to any activity referred to in paragraph (a);

(c) where the Minister considers it appropriate, create and cause to be issued, more share capital in the Company which may consist of any class of shares as described by the Companies Act;

(d) secure the subscription of other people to shares issued under paragraph (c);

(e) issue or transfer such number of shares in the Company as the Minister considers appropriate, to the Botswana Privatisation Asset Holding Proprietary (Limited); and

(f) exercise all the rights of the Government as a shareholder in the Company, and in writing, delegate to any other person, the exercise of such rights.

5. (1) Subject to subsection (2), the Company shall not be exempt from any tax, duty, rate or levy imposed by the provisions of the Income Tax Act, Value Added Tax Act and the Customs and Excise Duty Act.

Tax
exemptions

Cap. 52:01

Cap. 50:03

Cap. 50:01

Cap. 53:01

(2) Notwithstanding anything to the contrary contained in the Income Tax Act and the Transfer Duty Act, no transfer duty or any other tax shall be payable as at the conversion date in respect of —

(a) the creation of the initial share capital under section 3 (2);

(b) the issue of shares in the Company to the Minister;

(c) the issue or transfer of shares or loans of the Company from the Government to any other person;

(d) the transfer of assets to and from the Company to any other person; and

(e) anything done in order to give effect to the conversion of the Post from a statutory corporation to a public company, or the registration of the Company's constitution.

6. The Company shall not be exempt from applying to any relevant authority for a licence to engage in any activity specified in its constitution.

Licence

PART III — *Financial Provisions*

Borrowing
powers

7. (1) The Company may, in order to discharge its functions and to meet its obligations, borrow money in accordance with its constitution and on such terms and in such sums as it may require.

(2) Any borrowing by the Company under subsection (1) shall be subject to the approval of the Minister responsible for finance.

PART IV — *Miscellaneous*

Transitional
provisions

8. (1) Every contract or agreement, whether in writing or not, and every deed, bond or other instrument to which the Post was a party or which affected the Post and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Company were a party thereto or affected thereby instead of the Post.

(2) Any properties, assets, rights, debts, liabilities and obligations of the Government and the benefit and burden of all contracts made by or on behalf of the Government which are part of, or concern or relate to the Post as a commercial organisation of the Government, shall be transferred to and vest in the Company as a corporate body.

(3) Any legal proceedings pending immediately before the date on which the Company is registered, to which the Post was a party shall be continued as if the Company had been party thereto instead of the Post.

(4) Any act lawfully performed by the Post before the conversion date shall continue to be valid and shall continue to be performed by the Company.

(5) All employees of the Post shall continue to be employees of the Company, and shall be subject to the conditions under which they were appointed as employees of the Post.

(6) Any inquiries or proceedings, whether of a disciplinary nature or otherwise, instituted or pending in respect of any employee of the Post before the conversion date shall be dealt with, inquired into and determined in accordance with the procedures in place before the conversion date concerning such inquiry or proceedings.

(7) The Employee Pension Fund shall remain in existence after the conversion date and every employee of the Post who was a member of the Fund immediately before the conversion date shall remain a member of the Fund in accordance with its trust deed and rules, and shall retain all benefits that are due to them in terms of the rules of the Fund.

(8) The Board of the Post shall, until otherwise determined by the Minister, and subject to the constitution or the documents referred to under section 3 (3), as the case may be, of the Company, serve as Directors of the Company.

9. From the conversion date, any reference to “wholly-owned Government corporation”, “statutory corporation” or any such similar reference in any Act shall not be deemed to be references to the Company.

Reference to
certain terms

10. The Botswana Postal Services Act shall be repealed on the conversion date.

Repeal of
Cap. 72:01

PASSED by the National Assembly this 5th day of December, 2013.

BARBARAN. DITHAPO,
Clerk of the National Assembly.