



GENERAL

ADVISORY

CIRCULAR

CIVIL AVIATION AUTHORITY OF BOTSWANA

CAAB Document GAC-020

**GUIDANCE FOR APPLICANT:
CONDUCT OF REVIEWS OF
DECISIONS OR PROPOSALS MADE
BY THE AUTHORITY**

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1. INTRODUCTION

The types of decisions or proposals made by the Civil Aviation Authority of Botswana (CAAB) which are subject to review are defined in Part XVII of the Civil Aviation Act 2011 (extract attached at Annex A). When such a decision to refuse an application or a proposal to vary, suspend or revoke a licence, certificate or approval etc is received, the 'applicant' may request a review to be undertaken as detailed in Part 3.

2. HOW DO I REQUEST A REVIEW

The letter containing the notification of the Authority's decision/proposal will provide details on whom to contact to request a review.

3. WHAT HAPPENS NEXT

Applicant requests review	The applicant may within 14 days of a decision or proposal request a review. The request is sent to the relevant Section Head.
Initial assessment by the Section Head	The Section Head will conduct an initial assessment and make a decision based on the merits of the application. OR, Write up a report with recommendations to the Director of the Directorate.
Review and recommendations by the Director	The director will review the report and comments made by the Section Head and close the request OR make recommendations to the Chief Executive Officer.
Action by the CEO	The CEO may take action against or in favor of the application in conjunction with the comments and recommendations made by the Director. The CEO may, by the powers granted to him/her by the Minister, appoint an Appeals Tribunal consisting of non-executive members to review the application.
The applicant is notified of the timetable for the review	An Appeals Tribunal Lawyer is appointed to manage the review and will write to the applicant with details of the review including the timetable for submissions.
Brief prepared by CAAB	The Authority will produce a brief (as described below) setting out their case.
Brief sent to applicant who prepares representations	The brief is sent to the applicant who then has the time specified in the notified timetable to submit written representations of their case.
CAAB may comment on the applicant's representations	The applicant's representations are considered by The Authority who may submit comments afterwards

The applicant may submit a response to the CAAB comments	The Authority's comments are sent to the applicant who may submit a response.
Bundle of documents circulated	The Appeals Tribunal Lawyer circulates a bundle of documents for the hearing comprising the CAAB Brief, applicant's representations, CAAB comments (if any) and the applicant's response (if any).
Date of hearing fixed	A date for the hearing will be fixed by the Appeals Tribunal appointed to conduct the Review. This date may only be changed in exceptional circumstances.
Review hearing	Review conducted by Members of CAAB Appeals Tribunal and the decisions normally available within 10 days of the review.

4. WHAT IS IN THE BRIEF

The Brief is compiled by the Authority and will contain detailed reasons for the decision or proposal.

5. WHAT HAPPENS DURING THE REVIEW

a) The applicant will be offered an oral hearing. The hearing may be attended by:

- The Appeals Tribunal;
- A technical assessor (if one has been appointed);
- The Appeals Tribunal Lawyer, who advises the Appeals Tribunal;
- The applicant;
- The applicant's supporters, who may include legal representative and witnesses;
- The relevant CAAB employee(s);
- The CAAB Lawyer, who advises the CAAB employees;
- A secretary who will prepare a transcript of the hearing which will be made available to all parties;
- Members of the public unless the hearing is to be in private (see next section).

b) The hearing will be based on the document bundle circulated to the parties (comprising the CAAB Brief, applicant's representations, CAAB comments (if any) and the applicant's response (if any)). The applicant has the opportunity to make oral representations, seek clarification and ask questions of the CAAB employees. CAAB employees will be given the opportunity to seek clarifications, comment on

the oral representations and question the applicant. The last word will go to the applicant.

- c) If any new information or arguments are introduced, either by the applicant or CAAB employees, which were not contained within the documents, the hearing may be adjourned to allow time for all parties to consider the new issues.
- d) A transcript of the hearing will be supplied to applicant.
- e) If the applicant decides not to attend or be represented at the oral hearing, the review will be undertaken by the CAAB Appeals Tribunal based on the documents.

6. HEARING TO BE IN PUBLIC

The hearing will be in public unless either the applicant or CAAB request it to be in private and the CAAB Appeals Tribunal are satisfied that it may be held in private.

7. THE DECISION

The applicant will be informed, in writing, of the decision and the reasons for it, normally within 7 to 10 days of the hearing.

8. PUBLICATION OF THE DECISION

- a) As an option, the decisions will be published in full on the CAAB website, including the name of the person or organisation concerned. Two years after the hearing, the report will be dis-identified.
- b) After a further three years (so five years after the hearing), the report will be removed from the website.
- c) Where a hearing has been held in private, there will be redacted any material referring to the matters in respect of which the decision to hold the hearing in private had been based.
- d) In addition, representations may be made by an appellant, at the hearing or separately, putting forward reasons why, exceptionally, the decision should not be published in full. Such representations will be considered by the CAAB Appeals Tribunal and their determination notified to the appellant.

9. RIGHTS OF APPEAL TO THE COURT

- a) If a personnel licence, rating, certificate or authorisation granted under the Botswana Civil Aviation Regulations is refused, revoked, suspended or varied on the grounds that the CAAB does not consider the person concerned a fit person (in terms of character as opposed to medical fitness) to hold such a licence, that person has a right of appeal to the Court against the decision of the CAAB Appeals Tribunal. The appeal should be filed within 21 days of the date of the decision letter.

10. RE-APPLICATION

It should be noted that after a decision to suspend, refuse a licence, certificate, rating or authorisation is made, the applicant may at any time in the future re-apply. Clearly, if a further application is made quite soon after a decision has been reached then in the absence of any relevant new material in support of the applicant the CAAB is likely to reach the same decision. However, it is important that the applicant understands that a refusal or suspension is not permanent.

11. PART XVII REVIEW COMPLAINTS PROCEDURE

If you have any complaint concerning the manner in which a review is conducted, you may write to the Corporate Secretary to the Civil Aviation Authority, P O Box 250, Gaborone, Botswana.



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For/Civil Aviation Authority of Botswana



End of Advisory Circular

ANNEX A

EXTRACT FROM THE CIVIL AVIATION ACT 2011

APPEALS

79. (1) There shall continue to be an Appeals Tribunal which shall hear and determine appeals from decisions of the Authority under this Act.

(2) The Appeals Tribunal shall comprise not more than five persons appointed by the Minister —

(a) one of whom shall have expertise and experience in administrative law;

(b) one of whom shall have expertise and experience in aviation and its regulations; and

(c) one of whom shall have expertise and experience in the issue which is the subject of the appeal.

(3) Members may be appointed on a full-time or a part-time basis and where appointed on a full-time basis, the appointment shall be for not more than three years.

(4) A member shall not qualify for appointment as a member of the Appeals Tribunal if he or she is regulated by the Authority or has an interest in an entity which is regulated by the Authority.

(5) The provisions of sections 16 to 18, 20 to 24 and 26 shall apply with necessary modification to the members of the Appeals Tribunal.

80. (1) Any person who is aggrieved by a decision of the Authority for anything relating —

(a) to any general regulatory decision that is made by the Authority under this Act;

(b) specifically to the issue of a licence, permit, certificate, registration, approval or any authorisation under this Act or regulations made under this Act; or

(c) to any regulatory decisions made under any applicable enactment, may appeal against that decision to the Appeals Tribunal.

(2) Every appeal under this section shall be lodged with the Appeals Tribunal, in such form and manner as the Appeals Tribunal may require together with the prescribed fee, not later than 14 days immediately after the day on which the decision complained of was communicated to the appellant by the Authority.

81. (1) The Appeals Tribunal shall consider every appeal lodged with it under section 80.

(2) The Appeals Tribunal shall also have the power to review any regulatory decision of the Authority in respect of which a notice has been lodged with it in terms of section 80 (2).

(3) Any person aggrieved by a decision of the Appeals Tribunal in dismissing his or her appeal to it, or in respect of any variation or alteration in the conditions of a licence, permit or certificate issued to him or her, may appeal that decision to the High Court.