



REPUBLIC OF BOTSWANA

GOVERNMENT GAZETTE EXTRAORDINARY

Vol. LX, No. 22

GABORONE

25th February, 2022

CONTENTS

Page

Declaration of Non-Bank Financial Institutions – G.N. No. 107 of 2022.....1195

The following Supplements are published with this issue of the *Gazette* –

| | |
|----------------------------------------------------------------------------------------------------|-------------|
| Supplement A – Financial Intelligence Act, 2022 – Act No. 2 of 2022..... | A.3 – 46 |
| Virtual Assets Act, 2022 – Act No. 3 of 2022..... | A.47 – 64 |
| Trust Property Control Act, 2022 – Act No. 4 of 2022..... | A.65 – 78 |
| Movable Property (Security Interests) Act, 2022 – Act No. 5 of 2022..... | A.79 – 110 |
| Societies Act, 2022 – Act No. 6 of 2022..... | A.111– 122 |
| Companies (Amendment) Act, 2022 – Act No. 7 of 2022..... | A.123 – 131 |
| Chemical Weapons (Prohibition) (Amendment) Act, 2022 – Act No. 8 of 2022..... | A.133 – 134 |
| Nuclear Weapons (Prohibition) (Amendment) Act, 2022 – Act No. 9 of 2022..... | A.135 – 136 |
| Biological and Toxin Weapons (Prohibition) (Amendment) Act, 2022 – Act No. 10 of 2022..... | A.137 – 138 |
| Counter Terrorism (Amendment) Act, 2022 – Act No. 11 of 2022..... | A.139 – 143 |
| Proceeds and Instruments of Crime (Amendment) Act, 2022 – Act No. 12 of 2022..... | A.145 – 147 |
| Criminal Procedure and Evidence (Amendment) Act, 2022 – Act No. 13 of 2022..... | A.149 – 150 |
| Criminal Procedure and Evidence (Controlled Investigations) Act, 2022 – Act No. 14 of 2022..... | A.151 – 173 |
| Extradition Amendment Act, 2022 – Act No. 15 of 2022..... | A.175 |
| Mutual Assistance in Criminal Matters (Amendment) Act, 2022 – Act No. 16 of 2022..... | A.177 – 178 |

The Botswana Government *Gazette* is printed by Department of Government Printing and Publishing Services, Private Bag 0081, GABORONE, Republic of Botswana. Annual subscription rates are P600,00 post free surface mail, SADC Countries airmail P1,357,00, Rest of Africa airmail P1,357,00, Europe and USA airmail P1,735,00.

The price for this issue of the Extraordinary (inclusive of Supplements) *Gazette* is P10.00.

| | |
|---------------------------------------------------------------------------------------------------|-------------|
| Precious and Semi-Precious Stones (Protection) (Amendment) Act, 2022 – Act No. 17 of 2022..... | A.179 – 182 |
| Real Estate Professionals (Amendment) Act, 2022 – Act No. 18 of 2022..... | A.183 – 184 |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Supplement C – Financial Intelligence (Implementation of United Nations Security Council Resolutions) Regulations, 2022 – S.I. No. 13 of 2022..... | C.95 – 111 |
| Financial Intelligence Regulations, 2022 – S.I. No. 14 of 2022..... | C.112 – 147 |
| Criminal Procedure and Evidence (Controlled Investigations) Act (Date of Commencement) Order, 2022 – S.I. No. 15 of 2022..... | C.148 |
| Collective Investment Undertakings (Amendment) (Date of Commencement) Order, 2022 – S.I. No. 16 of 2022..... | C.149 |
| Companies (Amendment) (Specified Sections Commencement Date) Order, 2022 – S.I. No. 17 of 2022..... | C.150 |
| Virtual Assets Regulations, 2022 – S.I. No. 18 of 2022..... | C.151 – 165 |

Government Notice No. 107 of 2022

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY ACT
(Cap. 46:08)

Declaration of Non-Bank Financial Institutions

IN PURSUANCE of the provisions of section 2 (*dd*) of the Non-Bank Financial Institutions Regulatory Authority Act, the Minister hereby declares the following to be non-bank financial institutions —

- (a) virtual assets service provider; and
- (b) issuer of initial token offerings.

DATED this 25th day of February, 2022.

PEGGY O. SERAME,
Minister of Finance and Economic Development.

FINANCIAL INTELLIGENCE ACT, 2022

No. 2



of 2022

ARRANGEMENT OF SECTIONS

PART I — *Preliminary*

SECTION

1. Short title
2. Interpretation

PART II — *Establishment of Financial Intelligence Agency*

3. Conflict with other laws
4. Continuation of Agency
5. Appointment of Director General
6. Functions of Agency
7. Security screening of Director General, etc.

PART III — *National Coordinating Committee on Financial Intelligence*

8. Continuation of National Coordinating Committee on Financial Intelligence
9. Functions and duties of Committee
10. Declaration of terrorist or terrorist group
11. Meetings of Committee
12. Sub-committees of Committee

PART IV — *Duty to Implement Programmes and Identify Customers*

13. Obligations to conduct risk assessment
14. Obligation to implement programmes to combat commission of financial offence
15. Obligation to implement group-wide programmes
16. Duty to conduct customer due diligence
17. Reliance on third party for customer due diligence measures
18. Obligation relating to agents for money or value transfer services
19. Duty to conduct ongoing customer due diligence
20. Identification of customer
21. Enhanced due diligence
22. Enhanced due diligence measures relating to prominent influential persons

A.4

23. Enhanced due diligence measures relating to beneficiaries of life insurance services
24. Enhanced due diligence measures relating to cross border correspondent banking
25. Prohibition of anonymous accounts
26. Prohibition of shell banks
27. Prohibition of establishing or maintaining business relationship with terrorist or member of terrorist group
28. Simplified customer due diligence measures
29. Monitoring complex, unusual and high risk transactions
30. Failure to complete customer due diligence

PART V — *Keeping of Records*

31. Keeping of records
32. Period of record keeping
33. Records kept by third party
34. Admissibility of electronic records
35. Offences relating to records
36. Access to records of specified party
37. Analysis of information

PART VI — *Reporting Obligation and Cash Transactions*

38. Reporting of suspicious transactions
39. Cash transactions above prescribed limit
40. General reporting
41. Conveyance of cash
42. Wire transfer
43. Content of suspicious transaction report
44. Continuation of transaction
45. Interruption of transaction by Agency
46. Offences relating to reporting
47. Indemnity of person making report
48. Offences for non-compliance

PART VII — *Referral, Supervision and Exchange of Information*

49. Obligations of supervisory authorities
50. Offence for failure to prevent criminals from holding controlling interest
51. Obligations of accountable institutions
52. Receipt of information by Agency
53. Referral of information by Agency
54. Referral of information by supervisory authority
55. Membership of international financial organisation
56. Certificate issued by Agency
57. Information held by Agency

PART VIII — *General Provisions*

58. Confidentiality by Director General, etc.
59. Confidentiality by third parties
60. Indemnity of Director General, etc.
61. Power to amend Schedules
62. Annual report
63. Regulations
64. Repeal of Cap. 08:07
65. Savings
 - Schedule I
 - Schedule II
 - Schedule III

An Act to re-enact with amendments the Financial Intelligence Act; to continue the establishment of the Financial Intelligence Agency and re-constitute the National Coordinating Committee on Financial Intelligence as a high level committee; to provide for third parties to perform certain customer due diligence measures on behalf of specified parties; to enable the Financial Intelligence Agency to initiate an analysis of information based on information in its own possession or information received from other sources to establish a suspicious transaction, and for matters connected therewith and incidental thereto.

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Financial Intelligence Act, 2022. Short title
2. In this Act, unless the context otherwise requires — Interpretation
 - “accountable institution” means a person referred to in Schedule III;
 - “act of terrorism” has the same meaning assigned to it under the Counter-Terrorism Act; Cap. 08:08
 - “Agency” means the Financial Intelligence Agency continued under section 4;
 - “anonymous account” means an account which cannot be linked to any person or be traced to any customer;
 - “ammunition” has the same meaning assigned to it under the Arms and Ammunition Act; Cap. 24:01
 - “arms” has the same meaning assigned to it under the Arms and Ammunition Act;
 - “beneficial owner” means a natural person who ultimately owns or controls a customer or a natural person on whose behalf a transaction is being conducted, including a natural person who exercises ultimate effective control over a legal person or arrangement, such that —

A.6

- (a) in relation to a legal person —
- (i) is a natural person who either directly or indirectly holds such percentage of shares, as may be prescribed, voting rights or other ownership interest:

Provided that to the extent that there is doubt as to whether the person identified hereunder is the beneficial owner or where no natural person is identified as the beneficial owner, the natural person exercising control of the legal person through other means shall be the beneficial owner, or

- (ii) is a person who holds the position of senior managing official where no natural person was identified as a beneficial owner in terms of subparagraph (i);
- (b) in relation to a trust, is —
- (i) the settlor,
 - (ii) a trustee,
 - (iii) a protector, if any,
 - (iv) a beneficiary of a trust, or a class of beneficiaries, where the individuals benefiting from the trust have yet to be determined, or
 - (v) any other natural person exercising ultimate effective control over the trust by means of direct or indirect ownership or by other means, such as when he or she has the power, alone or jointly with another person or with the consent of another person, to —
 - (aa) dispose of, advance, lend, invest, pay or apply trust property or property of the trust,
 - (bb) vary or terminate the trust,
 - (cc) add or remove a person as a beneficiary or from a class of beneficiaries,
 - (dd) appoint or remove a trustee or give another person control over the trust, or
 - (ee) direct, withhold consent or overrule the exercise of a power referred to in subparagraphs (aa) – (dd);
- (c) in relation to other legal arrangements similar to trusts, is the natural person holding equivalent or similar positions to those referred to in paragraph (b); and
- (d) in the case of insurance, is the ultimate beneficiary of proceeds of a life insurance policy or other related investment services when an insured event covered by the policy occurs;

“business relationship” means any arrangement made between a customer and a specified party or accountable institution where the purpose or effect of the arrangement is to facilitate an occasional, frequent, habitual or regular course of dealing between the customer and specified party or accountable institution;

- “cash” means coin and paper money of Botswana or of another country that is designated as a legal tender and that circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;
- “close associate” means a person who is closely connected to another person socially, professionally or through business interests or activities;
- “Committee” means the National Coordinating Committee on Financial Intelligence continued under section 8;
- “comparable body” means a body outside Botswana with functions similar to those of the Agency;
- “competent authority” means a public authority with designated responsibilities for combating financial offences;
- “competent United Nations body” means —
- (a) the Security Council Sanctions Committee established pursuant to the following Resolutions —
 - (i) Resolution 1267 of 1999,
 - (ii) Resolution 1989 of 2011, and
 - (iii) Resolution 2253 of 2015;
 - (b) the Security Council Sanctions Committee established pursuant to Resolution 1988 of 2011;
 - (c) the Security Council Sanctions Committee established pursuant to Resolution 1718 of 2006; and
 - (d) the Security Council when it acts under Chapter VII of the Charter of the United Nations in adopting targeted financial sanctions related to the prevention, suppression, disruption and financing of the proliferation of weapons of mass destruction;
- “correspondent banking” means the provision of banking services by one bank to another;
- “councillor” has the same meaning assigned to it under the Local Government Act; Cap. 40:01
- “credible sources” means any independent and reliable source of information such as international institutions, authoritative publications and mutual evaluation or detailed assessment reports;
- “customer” includes, a natural person, unincorporated body, legal arrangement, legal person or body corporate who has entered into or is in the process of entering into a —
- (a) business relationship; or
 - (b) single transaction,
 - with a specified party or an accountable institution;
- “customer due diligence” means the process where relevant information about the customer is collected and evaluated for any potential risk of commission of a financial offence;
- “designated person” means any person, entity or group that has been designated by a competent United Nations body as a person, entity or group against whom member states must take action for the prevention and combating of any activity specified in the applicable resolution;

A.8

- Cap. 23:02 “Director General” means the Director General of the Agency;
“Directorate” means the Directorate of Intelligence and Security Service established under the Intelligence and Security Service Act;
- “Egmont Group” means an international body of financial intelligence units that serves as a platform for the secure exchange of expertise and financial intelligence to combat financial offences;
- “enhanced due diligence” means higher level of due diligence required to mitigate the increased risk of commission of financial offence;
- Cap. 46:04 “financial institution” includes a bank as defined under the Banking Act, a building society as defined under the Building Societies Act or a non-bank financial institution as defined under the Non-Bank Financial Institutions Regulatory Authority Act;
- Cap. 42:03 “financial offence” means money laundering, financing of terrorism, financing of proliferation or financing illicit dealing in arms or ammunition;
- Cap. 46:08 “fund” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;
- Cap. 08:03 “group-wide” means a group that consists of a parent company or any other legal person exercising control and coordinating functions over the members of the group for the application of group supervision, together with branches or subsidiaries that are subject to anti-money laundering or counter financing of terrorism policies and procedures at the group level;
- “guidance notes” means guidance, instructions or recommendations issued by the Agency or supervisory authority to assist a specified party or an accountable institution to comply with the provisions of this Act;
- “high risk business” means a business —
- (a) incorporated in a high risk jurisdiction;
 - (b) having a business relationship with a business situated in a high risk jurisdiction;
 - (c) dealing in goods, services or commodities that present a high risk for financial offence;
 - (d) that has a business relationship with other businesses that appear on the sanction list;
 - (e) that is subject to or has been a subject of an investigation by an investigatory or supervisory authority; or
 - (g) that is managed by a person who is the subject of an investigation by an investigatory or supervisory authority;
- “high risk jurisdiction” means a country that —
- (a) is identified by the Financial Action Task Force or any such similar body as having no or weak regime on anti-money laundering, counter-financing of proliferation and counter illicit dealing in arms or ammunition;
 - (b) is subject to sanctions, embargos or similar measures issued by the United Nations Security Council; or

- (c) provides funding or support for terrorist activities or finances proliferation or illicit dealings in arms or ammunition or a country that allows high risk business;
- “immediate member of the family” means a spouse, son, daughter, sibling or parent;
- “*Kgosi*” has the same meaning assigned to it under the Bogosi Act; Cap. 41:01
- “illicit dealing in arms or ammunition” means a contravention of any of the provisions of Parts IV to VI of the Arms and Ammunition Act;
- “investigatory authority” means an authority empowered by an Act of Parliament to investigate or prosecute unlawful activities;
- “judicial officer” has the same meaning assigned to it under the Penal Code; Cap. 08:01
- “legal arrangement” means trusts or other similar arrangement;
- “money laundering” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;
- “non-profit organisation” means a Society registered under the Societies Act; Cap. 18:01
- “NBC weapons” means —
- (a) nuclear explosive device as defined in the Nuclear Weapons (Prohibition) Act; Cap. 24:05
 - (b) biological or toxin weapons as defined in the Biological and Toxin Weapons (Prohibition) Act; or Cap. 24:06
 - (c) chemical weapons as defined in the Chemical Weapons (Prohibition) Act; Cap. 24:04
- “national risk assessment” means appropriate steps that the country takes to identify and assess financial offence risk for the country on an ongoing basis, in order to —
- (a) inform potential changes to the country’s anti-money laundering, counter financing of terrorism, counter financing of proliferation regime and counter illicit dealings in arms or ammunition, including legislative changes and other measures; and
 - (b) assist in allocation and prioritisation of anti-money laundering, counter financing of terrorism, counter financing of proliferation and counter illicit dealings in arms or ammunition resources;
- “nationally listed person” means a person, entity or structured group that the Minister has by order, issued under section 10 (2), listed as a person, entity or group against whom authorities in Botswana must take action for the prevention and combating of terrorism, terrorism financing or financing of proliferation;
- “proliferation” has the same meaning assigned to it under the Counter Terrorism Act;
- “prominent influential person” means a person who is or has been entrusted with public functions within Botswana or by a foreign country, his or her close associates or immediate member of the family or an international organisation and includes —

A.10

- (a) a President;
- (b) a Vice-President;
- (c) a Cabinet Minister;
- (d) a Speaker of the National Assembly;
- (e) a Deputy Speaker of the National Assembly;
- (f) a member of the National Assembly;
- (g) a Councillor;
- (h) a senior government official;
- (i) a judicial officer;
- (j) a *Kgosi*;
- (k) a senior executive of a private entity where the private entity is of such turnover as may be prescribed;
- (l) a senior executive of a public body;
- (m) a senior executive of a political party;
- (n) senior executives of international organisations operating in Botswana; or
- (o) such person as may be prescribed;

Cap. 31:05

“property” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;

“protector” has the same meaning assigned to it under the Trust Property Control Act;

“risk assessment” in relation to specified party, means the undertaking of appropriate steps to identify, assess and understand the risk of financial offence to which its business is subject;

“risk management systems” means policies, technologies, procedures and controls, informed by a risk assessment, that enable a specified party to establish the risk indicators used to characterise customers, products and services to different categories of risk (low, medium or high risk) with the aim of applying proportionate mitigating measures in relation to the potential risk of financial offence in each category of risk established;

“senior executive of a political party” means any person who is the president, vice-president, chairperson, deputy-chairperson, secretary or treasurer of such political party or who is a member of the committee or governing body thereof, or who holds in such political party any office or position similar to any of those mentioned above;

“senior executive of a private entity” means a director, controlling officer, partner or any person who is concerned with the management of the private entity’s affairs;

“senior executive of a public body” means a senior officer of an organisation, establishment or body created by or under any enactment and includes any company in which Government has equity shares or any organisation or body where public moneys are used;

- “senior government official” means a public officer in senior management appointed under the Public Service Act or any senior officer appointed under any enactment; Cap. 26:01
- “senior management” with respect to a legal person or legal arrangement means a director, controlling officer, partner, protector, trustee or any person who is concerned with the management of its affairs;
- “settlor” has the same meaning assigned to it under the Trust Property Control Act; Cap. 31:05
- “shell bank” has the same meaning assigned to it under the Banking Act; Cap. 46:04
- “simplified due diligence” means the lowest level of due diligence that can be completed on a customer;
- “specified party” means a person listed in Schedule I to this Act, including branches or subsidiaries of that person;
- “supervisory authority” means a competent authority designated under Schedule II with responsibilities aimed at ensuring compliance by specified parties or accountable institutions, except that the Agency shall act as supervisory authority for a specified party or accountable institution that does not have a supervisory authority;
- “suspicious transaction” means a transaction which —
- (a) is inconsistent with a customer’s known legitimate business, personal activities or with the normal business for the type of account which the customer holds;
 - (b) gives rise to a reasonable suspicion that it may involve the commission of a financial offence;
 - (c) gives rise to a reasonable suspicion that it may involve property connected to the commission of a financial offence or involves property used to commit a financial offence whether or not the property represents the proceeds of an offence;
 - (d) is made in circumstances of unusual or unjustified complexity;
 - (e) appears to have no economic justification or lawful objective;
 - (f) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or
 - (g) gives rise to suspicion for any other reason;
- “tip off” means to inform a person suspected of committing a financial offence that —
- (a) a suspicious transaction has been reported; or
 - (b) he or she is under investigation for commission of a financial offence, where the tipping off is likely to prejudice —
 - (i) the investigation, or
 - (ii) the investigation to the person suspected of committing a financial offence;
- “transaction” means an arrangement between a customer and a specified party or accountable institution, and includes the following —

A.12

(a) a deposit, withdrawal or transfer between accounts, opening an account, issuing a passbook, renting a safe deposit box, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument or investment security or any other payment, transfer or delivery by or through or to any person by whatever means effected;

(b) an arrangement between persons; or

(c) a proposed transaction;

“trust” has the same meaning assigned to it under Trust Property Control Act;

“trustee” has the same meaning assigned to it under the Trust Property Control Act;

“trust and company service provider” means a person or business that is not covered under this Act, and which as a business, provides any of the following services —

(a) formation agent of legal persons;

(b) acting or arranging for another person to act as a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;

(c) providing a registered office, business address or accommodation, correspondence or administrative address for a legal person, a partnership or any other arrangement;

(d) acting as or arranging for another to act as a trustee or a trust or performing the equivalent function for another form of legal arrangement;

(e) acting as or arranging for another person to act as a nominee shareholder for another person;

“ultimate effective control” means where ownership or control is exercised through a chain of ownership or by means of control other than direct control;

“virtual asset” has the same meaning assigned to it under the Virtual Assets Act; and

“virtual asset service provider” has the same meaning assigned to it under the Virtual Assets Act.

Act No. 3
of 2021

Conflict with
other laws

Continuation
of Agency

3. In the event of any conflict or inconsistency between the provisions of this Act and any other law on combating the commission of financial offences, the provisions of this Act shall take precedence.

4. (1) The Financial Intelligence Agency is hereby continued under this section.

(2) The Agency shall consist of a Director General and such other officers of the Agency, as may be necessary for the proper performance of the functions of the Agency.

(3) The Agency shall be a public office and accordingly, the provisions of the Public Service Act shall with such modifications as may be necessary, apply to the Director General and to officers of the Agency.

(4) Subject to the provisions of this Act, the Agency shall not, in the performance of its functions, be subject to the direction or control of any other person or authority.

5. (1) There shall be a Director General who shall be appointed by the President on such terms and conditions as the President may, on the recommendation of the Minister, determine.

Appointment
of Director
General

(2) The Director General shall be a person of recognised experience in one or more of the following disciplines —

- (a) finance;
- (b) law enforcement;
- (c) law; or
- (d) any other related field.

(3) A person appointed as a Director General shall hold office for a five year renewable term or until he or she attains the age of 60 years, whichever is the earlier.

(4) A person holding the office of Director General may be removed from office for —

- (a) inability to perform the functions of his or her office arising from infirmity of body, mind or any other cause;
- (b) gross misconduct; or
- (c) incompetence.

(5) The provisions of section 113 (3), (4) and (5) of the Constitution shall apply with necessary modifications to the removal of a person holding office of Director General.

(6) The Director General shall be responsible for the direction and administration of the Agency.

(7) The Director General shall appoint in writing, an officer of the Agency as an examiner for the purposes of determining compliance with this Act.

6. (1) The Agency shall be the central entity responsible for requesting, receiving, analysing and disseminating, spontaneously or when requested, to an investigatory authority, supervisory authority, comparable body or competent authority, disclosures of financial information —

Functions of
Agency

- (a) concerning a suspicious transaction;
- (b) required by or under any enactment in order to counter the commission of a financial offence; or
- (c) related to the financing of an act of terrorism, proliferation of NBC weapons or illicit dealing in arms or ammunition.

(2) For the purposes of subsection (1), the Agency shall —

- (a) collect, process, analyse and interpret all information disclosed to it and obtained by it under this Act;
- (b) inform, advise and collaborate with an investigatory authority or supervisory authority in accordance with this Act;
- (c) forward financial intelligence reports to an investigatory authority;
- (d) give guidance to a specified party, regarding the performance by the specified party of duties under the Act;

- (e) provide feedback to a specified party or accountable institution regarding a report made in accordance with this Act;
 - (f) exchange information with a comparable body or competent authority;
 - (g) call for and obtain further information from persons or bodies that are required to supply or provide information in terms of this Act or any law;
 - (h) communicate the list of high risk countries to specified parties, accountable institutions and supervisory authorities;
 - (i) advise on concerns about weaknesses in the anti-money laundering, counter financing of terrorism systems of other countries, in such manner as may be prescribed;
 - (j) direct a specified party or an accountable institution to apply specific counter-measures, appropriate to the identified risks —
 - (i) when requested to do so by the Financial Action Task Force, or
 - (ii) independently of any request by the Financial Action Task Force; and
 - (k) develop standards or criteria applicable to the reporting of suspicious transactions that shall take into account other existing and future pertinent national and international standards.
- (3) In furtherance of the functions of the Agency, the Director General may —
- (a) consult with and seek such guidance from law enforcement officers, Government agencies and such other persons as the Agency considers desirable; or
 - (b) conclude memoranda of understanding with other local or foreign government agencies, or other institutions and such other persons as the Agency considers desirable.
- 7. (1)** A person shall not be appointed as Director General or officer of the Agency unless —
- (a) a security screening investigation with respect to that person has been conducted by the Directorate; and
 - (b) the Directorate is satisfied that the person may be so appointed without the possibility of such a person posing a security risk or acting in a manner prejudicial to the objectives or functions of the Agency.
- (2) The Directorate shall, where it is satisfied that a person meets the requirements set out in subsection (1), issue a certificate with respect to the person in which it is certified that such a person has passed a security clearance.
- (3) The Director General or an officer of the Agency may at any time determined by the Minister, be subjected to a further security screening investigation in accordance with subsection (1).
- (4) The Directorate shall withdraw a certificate issued under subsection (2) where an investigation under subsection (3) reveals that the Director General or officer is a security risk or has acted in a manner prejudicial to the objectives or functions of the Agency.

(5) Where the Directorate withdraws a certificate issued under subsection (2) —

- (a) the Director General or officer shall be suspended from performing any functions of the Agency;
- (b) subject to the provisions of section 5 (5) of this Act, the Director General shall be removed from office and the office of the Director General shall become vacant;
- (c) the office of the officer shall become vacant; and
- (d) a new Director General or officer shall be appointed.

PART III — *National Coordinating Committee on
Financial Intelligence*

8. (1) The National Coordinating Committee on Financial Intelligence is hereby reconstituted and continued under this section.

(2) The committee shall consist of the following —

- (a) the Permanent Secretary to the President, who shall be the Chairperson; and
- (b) the Commander Botswana Defence Force, who shall be the Deputy Chairperson,
- (c) representatives, at Permanent Secretary level, from the following entities —
 - (i) the Ministry responsible for finance,
 - (ii) the Ministry responsible for presidential affairs and public administration,
 - (iii) the Ministry responsible for international cooperation,
 - (iv) the Ministry responsible for immigration,
 - (v) the Ministry responsible for defence,
 - (vi) the Ministry responsible for trade,
 - (vii) the Attorney General’s Chambers,
 - (viii) the Directorate of Public Prosecutions,
 - (ix) the Directorate of Intelligence and Security Service,
 - (x) the Directorate on Corruption and Economic Crime,
 - (xi) the Botswana Police Service,
 - (xii) the Chemical, Biological, Nuclear, Radiological Weapons Management Authority,
 - (xiii) the Office of the Receiver,
 - (xiv) the Non-Bank Financial Institution Regulatory Authority,
 - (xv) the Companies and Intellectual Property Authority,
 - (xvi) the Botswana Unified Revenue Service,
 - (xvii) the Bank of Botswana,
 - (xviii) the Financial Intelligence Agency, and
 - (xix) other representatives from any other entity assigned to deal with anti-money laundering, counter financing of terrorism and counter proliferation financing.

(3) The Office of General Counsel shall be the secretariat to the Committee.

Continuation
of National
Coordinating
Committee on
Financial
Intelligence

A.16

Functions and
duties of
Committee

- 9.** (1) The Committee shall oversee the implementation of United Nations Security Council Resolutions and successor Resolutions relating to —
- (a) the prevention and suppression of terrorism;
 - (b) countering financing of terrorism;
 - (c) countering financing of proliferation; and
 - (d) any other threat to international peace and security as may be determined by the United Nations Security Council acting under Part VII of the United Nations Charter.
- (2) Without derogating from the generality of subsection (1), the Committee shall with respect to declaration of terrorists and terrorists groups under section 10 —
- (a) consider and recommend to the Minister persons, entities or structured groups that meet the national listing criteria;
 - (b) consider applications for delisting from the national list;
 - (c) consider applications for unfreezing of property frozen in error;
 - (d) consider application for exemptions from sanctions measures by a nationally listed person, entity or structured group;
 - (e) conduct an annual review of all the entries in the National List to determine whether they remain relevant or appropriate and make modifications to the list including —
 - (i) the removal of individuals, entities or structured groups considered to no longer meet the designation criteria,
 - (ii) the modifications to those whose entries lack identifiers necessary to ensure effective implementation of the measures imposed upon them,
 - (iii) the removal of reportedly deceased individuals and entities and groups confirmed to have ceased to exist where credible information regarding death or cessation of existence is available, and
 - (iv) determine the status and location of frozen assets;
 - (f) to co-ordinate the national risk assessment to identify, assess and mitigate the risk of commission of a financial offence emerging from development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies;
 - (g) issue Guidelines for the effective implementation of targeted financial sanctions and other sanctions measures;
 - (h) conduct outreach activities; and
 - (i) prepare reports to the relevant United Nations Sanctions Committee or other institutions on measures taken in Botswana to implement the United Nations Security Council applicable resolutions.”
- (3) The duties of the Committee, with respect to policy, shall be to —
- (a) assess the effectiveness of policies and measures to combat financial offences;
 - (b) make recommendations to the Minister for legislative, administrative and policy reforms in respect to financial offences;

- (c) promote coordination among the Agency, investigatory authorities, supervisory authorities and other institutions with a view to improving the effectiveness of existing policies and measures to combat financial offences;
- (d) formulate policies to protect the international reputation of Botswana with regard to financial offences;
- (e) generally advise the Minister in relation to such matters relating to financial offences, as the Minister may refer to the Committee; and
- (f) to co ordinate the national risk assessment to identify, assess and mitigate the risk of commission of a financial offence emerging from development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies.

(4) For the purposes of this section, “applicable resolutions” means the current United Nations Security Council Resolutions and future successor Resolutions related to combating and preventing terrorism, terrorist financing or the proliferation of weapons of mass destruction issued under Chapter VII of the United Nations Charter, including but not limited to the following Resolutions —

- (a) Resolution 1267 of 1999;
- (b) Resolution 1373 of 2001;
- (c) Resolution 2253 of 2015;
- (d) Resolution 1718 of 2006;
- (e) Resolution 1874 of 2009;
- (f) Resolution 2087 of 2013;
- (g) Resolution 2094 of 2013;
- (h) Resolution 2231 of 2015;
- (i) Resolution 2270 of 2016;
- (j) Resolution 2321 of 2016; and
- (k) Resolution 2356 of 2017.

10. (1) The Minister may, on the recommendation of the Committee declare a person or structured group as a terrorist or terrorist group where —

- (a) the person, entity or structured group has been convicted of an offence under the Counter Terrorism Act; or
- (b) based on intelligence information, the Committee has reasonable grounds to believe that —
 - (i) a person, entity or structured group is engaged in terrorism,
 - (ii) the person, entity or structured group is owned wholly or jointly or is controlled directly or indirectly by a nationally listed person or a designated person; or
 - (iii) the person, entity or structured group is acting on behalf of or at the direction of a nationally listed person or a designated person.

(2) A declaration made under subsection (1) shall be made by Order published in the *Gazette*.

(3) For purposes of subsection (1), a person or structured group is engaged in terrorism if the person or structured group commits an act of terrorism or commits any offence under Counter Terrorism Act.

Declaration of
terrorist or
terrorist group

A.18

(4) Notwithstanding subsection (1), a terrorist or terrorist group declared as such under this section may include an individual or entity on the United Nations Security Council Sanctions List related to combating and preventing terrorism, terrorist financing or the proliferation of weapons of mass destruction issued under Chapter VII of the United Nations Charter.

(5) A terrorist or terrorist group designated as such by the United Nations Security Council referred to in subsection (4) extend to a person or group notwithstanding any rights granted to or obligations imposed under an existing contract made prior to the designation.

Meetings of
Committee

11. (1) The Committee shall meet at least once per quarter for the transaction of business.

(2) Notwithstanding the provisions of subsection (1), the Committee shall meet when the Chairperson so directs.

(3) There shall preside at the meeting of the Committee —

(a) The Chairperson;

(b) in the absence of the Chairperson, the Deputy Chairperson; or

(c) in the absence of the Chairperson and the Deputy Chairperson, a member of the Committee selected for purposes of that meeting by the members present.

(4) The Committee —

(a) shall regulate its meetings and proceedings in such manner as it thinks fit;

(b) may request advice and assistance from such persons as it considers necessary to assist it to perform its functions;

(c) may appoint committees from amongst its members to assist it in the performance of its functions; and

(d) may co-opt any person whether for a particular period or in relation to a particular matter to be dealt with by the Committee.

(5) At any meeting of the Committee, a quorum shall be constituted by not less than two thirds of the members.

Sub-committees
of Committee

12. The Committee may for the purpose of performing its functions, establish such sub-committees as it considers appropriate and may delegate to any such sub-committee any of its functions as it considers necessary.

PART IV — *Duty to Implement Programmes and Identify Customers*

Obligation to
conduct risk
assessment

13. (1) A specified party shall conduct an assessment of the risk of commission of financial offences and take appropriate measures to manage and mitigate the identified risks relating to —

(a) business relationships and transactions;

(b) pre-existing products, practices, and delivery mechanisms;

(c) development of new products, new business practices, new business procedures, new technologies and delivery mechanisms, and such risk assessments should be conducted prior to their launch or use; and

(d) life insurance services.

(2) A specified party shall keep an up to date record in writing of the steps it has taken under subsection (1), unless its supervisory authority notifies it in writing that such a record is not required.

(3) A supervisory authority shall not give notification referred to under subsection (2) unless it considers that the risk of commission of a financial offence applicable to the sector in which the specified party or accountable institution operates are clear and understood.

(4) A specified party shall provide the risk assessment it has prepared under subsection (1), the information on which that risk assessment was based and any record required to be kept under subsection (2), to its supervisory authority or a competent authority upon request.

(5) A specified party shall upon written request by a competent authority or self-regulatory body provide the risk assessment information in such manner as may be prescribed.

(6) A specified party shall assess its risk assessment at regular intervals and following any significant developments which might affect the risk to which it is subject, and shall where necessary update the risk assessment.

(7) A specified party that fails to conduct a risk assessment or to take the appropriate measures to manage and mitigate the risk of a commission of a financial offence identified in the risk assessment is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

(8) A specified party that fails to take such measures as are reasonably necessary to ensure that neither it nor a service offered by it, is capable of being used by a person to commit or to facilitate the commission of a financial offence is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

14. (1) A specified party shall implement programmes which have regard to risks identified in its risk assessment, commensurate to the size of the business and shall in that regard —

- (a) designate an anti-money laundering and counter financing of terrorism compliance officer, at management level, who will be in charge of the implementation of internal programmes and procedures, including maintenance of records and reporting of suspicious transactions, and ensure that the compliance officer has at all times, timely access to customer identification data, transaction records and other relevant information;
- (b) establish procedures to ensure high standards of integrity of employees and a system to evaluate the personal, employment and financial history when hiring employees;
- (c) maintain on-going employee training programme with regard to the specified party's obligations under this Act;

Obligation to implement programmes to combat commission of financial offence

- (d) develop and maintain independent audit function to examine and evaluate any policies, processes, procedures and controls developed in accordance with this section to ensure compliance with measures taken by the specified party to comply with the Act and the effectiveness of those measures;
 - (e) implement and maintain a customer acceptance policy, internal rules, programmes, policies, processes, procedures or such controls as may be prescribed to protect its system from financial offences.
- (2) A compliance officer designated under subsection (1) shall —
- (a) be a fit and proper person;
 - (b) not have been convicted of a serious offence in Botswana;
 - (c) not have been convicted outside Botswana of a serious offence, which, if committed in Botswana would have been a serious offence;
 - (d) not be an unrehabilitated insolvent;
 - (e) not be the subject of an investigation by a supervisory authority or an investigatory authority; and
 - (f) not have been a person holding a senior management position in a company which is disqualified from trading by a professional body or supervisory authority.
- (3) Programmes referred to in subsection (1) shall be consistent with guidance notes issued under section 49 (1) (c).
- (4) A specified party that fails to implement programmes to counter the risk of a commission of a financial offence is liable to an administrative fine not exceeding P5 000 000, as may be imposed by a supervisory authority.
- (5) For purposes of this section, “serious offence” has the same meaning assigned to it under Proceeds and Instruments of Crime Act.
- 15.** (1) A specified party shall implement group-wide programmes to counter the risk of a commission of a financial offence consistent with guidance notes issued under section 49 (1) (c) which should be applicable and appropriate to all branches and majority owned subsidiaries of the group.
- (2) A specified party shall maintain throughout its group, controls and procedures for —
- (a) protection of personal data in accordance with the Data Protection Act; and
 - (b) sharing of information required for —
 - (i) customer due diligence,
 - (ii) preventing or managing risk associated with the commission of a financial offence with other members of the group; and
 - (c) safeguarding the confidentiality and use of information exchanged, including to prevent a tip off.
- (3) A specified party shall apply measures referred to in section 14 (1) to all branches and majority owned subsidiaries of the group.

(4) A specified party shall provide group-level compliance, audit, and anti-money laundering and counter financing of terrorism functions with customer, account, and transaction information from branches and majority owned subsidiaries when necessary for anti-money laundering and counter financing of terrorism purposes.

(5) The information provided under subsection (4) shall include information and analysis of transactions or activities which appear unusual and may include a suspicious transaction report, its underlying information, or the fact that a suspicious transaction report has been submitted.

(6) Branches and majority owned subsidiaries of the group shall receive information referred to under subsection (4) from group-level functions when relevant and appropriate to risk management.

(7) A specified party shall regularly review and update policies, controls and procedures established and applied under this section.

(8) Where the laws of a foreign country permit, a specified party shall apply Botswana measures for countering commission of financial offences —

- (a) on a foreign branch; or
- (b) on a majority-owned subsidiary operating in a foreign country, where Botswana counter financial offence measures are more strict than the measures of the foreign country.

(9) Where the laws of the foreign country referred to above do not permit the application of Botswana measures for countering commission of financial offences on the foreign branch or on majority-owned subsidiary operating in a foreign country, any member of the group shall —

- (a) inform its supervisory authority accordingly; and
- (b) take additional measures to handle the risk of commission of financial offences effectively.

(10) A specified party shall ensure that information relevant for the prevention and management of risk of commission of financial offences is shared as appropriate between members of its group, subject to any restrictions on sharing information imposed by or under any enactment.

16. (1) A specified party shall conduct customer due diligence measures —

- (a) when establishing a business relationship with a customer;
- (b) carrying out an occasional transaction equal to or in excess of the prescribed amount;
- (c) when carrying out a transaction or occasional transaction equal to or in excess of the prescribed amount on behalf or on the instruction of a customer or any person, whether conducted as a single transaction or several transactions that appear to be linked;
- (d) when carrying out a domestic or international wire transfer;

Duty to
conduct
customer due
diligence

- (e) when there is doubt about the veracity or adequacy of previously obtained customer identification data; and
- (f) where there is suspicion of the commission of a financial offence.

(2) A specified party shall, in complying with the requirements to conduct customer due diligence measures, ensure that the extent of the measures taken reflect —

- (a) the risk assessment carried out in terms of section 13; and
- (b) its assessment of risk arising in any particular case.

(3) In assessing the nature and level of risk in a particular case, the specified party shall take into account, among other things, the following —

- (a) the purpose of the account, transaction or business relationship;
- (b) the value of assets to be deposited by a customer or size of the transaction undertaken by the customer;
- (c) the regularity and duration of the business relationship; and
- (d) frequency of occasional transactions conducted by a customer.

(4) A specified party that fails to conduct customer due diligence is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

Reliance on third party for customer due diligence measures

17. (1) Subject to a risk assessment, the duty imposed on a specified party to identify a customer under section 16, may be performed by a third party on behalf of a specified party.

(2) Where a specified party appoints a third party to conduct customer due diligence on its behalf, the specified party shall ensure that —

- (a) the third party performs the duties imposed on the specified party under sections 16 (1) (a)-(c), 20 (1) (a)-(c), and 31 (3) of this Act; and
- (b) the third party is regulated, supervised and monitored for compliance with customer due diligence and record-keeping requirements as set out in sections 16 and 31 of this Act.

(3) A specified party that relies on a third party shall provide the supervisory authority with such particulars of the third party as may be prescribed.

(4) A specified party that appoints a third party to conduct customer due diligence on its behalf is liable to a fine not exceeding P1 000 000, as may be imposed by the supervisory authority, where the third party fails to perform duties imposed on the third party under this section.

Obligation relating to agents for money or value transfer services

18. (1) With respect to provision of money or value transfer service, a specified party that relies on an agent shall —

- (a) ensure that the agent is licenced or registered by a competent authority;
- (b) maintain a current list of agents, which is accessible to competent authorities in the countries in which the specified party and the agent operate; and

(c) include the agent in its counter commission of financial offence programmes and monitor compliance with the programmes.

(2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

19. (1) A specified party shall, on an ongoing basis, conduct customer due diligence with respect to an existing business relationship which is subject to the requirements of customer identification and verification, including periodic review of accounts to maintain current information and records relating to the customer and beneficial owners.

Duty to
conduct
ongoing
customer
diligence

(2) Where a specified party engages with a prospective customer to establish a business relationship, the specified party shall obtain information to reasonably enable the specified party to determine whether future transactions to be performed in the course of the business relationship concerned are consistent with the specified party's understanding of risk of money laundering related to the prospective customer and knowledge of such customer, including information describing the source of the funds which the prospective customer expects to use throughout the course of the business relationship in concluding transactions in the course of the business relationship.

(3) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 500 000, as maybe imposed by a supervisory authority.

20. (1) A specified party shall, where required to conduct customer due diligence in terms of section 16 and before establishing a business relationship or carrying out a transaction —

Identification
of customer

(a) establish and verify the identity of a customer, unless the identity of that customer is known and has been verified by the specified party;

(b) establish and verify the identity of the beneficial owner;

(c) collect information to enable understanding of the anticipated purpose and intended nature of the business relationship or transaction; and

(d) obtain approval of senior management where the business relationship or transaction is established in a high risk jurisdiction or involves a high risk business.

(2) Where the customer is acting on behalf of another person, the specified party shall —

(a) establish the identity of the person on whose behalf the customer is acting;

(b) verify the customer's authority to establish the business relationship or to conclude the transaction on behalf of that other person; and

(c) verify the other person's identity on the basis of documents or information obtained from a reliable source which is independent of both the customer and the person on whose behalf the customer is acting.

(3) Where another person is acting on behalf of the customer, the specified party shall establish and verify —

- (a) the identity of the person acting on behalf of the customer;
- (b) that other person's authority to act on behalf of the customer; and
- (c) the other person's identity on the basis of documents or information obtained from a reliable source which is independent of both the customer and the person on whose behalf the customer is acting.

(4) The authority to act on behalf of another person under this section shall be in a prescribed manner.

(5) Where a specified party had established a business relationship with a customer before the coming into force of this Act, the specified party shall take into account whether and when customer due diligence measures have been previously applied and the adequacy of the data obtained or as may be specified in any guidelines issued under this Act, apply the customer due diligence measures on that customer on the basis of materiality and risk factors such as the type and nature of the customer, nature of the business relationship, products or transactions.

(6) Proof of identity of a customer under this section shall be through —

- (a) production of a National Identity Card for citizens;
- (b) production of a passport for non-citizens;
- (c) production of a refugee identity card issued under the Refugees (Recognition and Control) Act;
- (d) in relation to a company —
 - (i) a certificate of incorporation or a certificate of registration,
 - (ii) trading licence, and
 - (iii) ownership and control structure and directors;
- (e) a deed of trust; or
- (f) such other identity document as the Minister may prescribe.

Cap. 25:01

(7) A person who transacts business with a specified party or accountable institution using false identification documents commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years or to both.

(8) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 000 000, as may be imposed by the supervisory authority.

(9) For purposes of this section, "verify" means establishing the truth of information received from the customer on the basis of documents or information obtained from a reliable source which is independent of the person whose identity is being verified except that for subsection (3), information need not be from a source which is independent of the person whose identity is being verified.

(10) Where a specified party —

- (a) has not reported a suspicious transaction under section 38; and
- (b) forms a reasonable suspicion that continuing the customer due diligence process will tip off the customer,

the specified party shall discontinue the customer due diligence process and instead report a suspicious transaction.

21. (1) A specified party shall, in accordance with its risk management system conduct enhanced due diligence —

Enhanced due diligence

- (a) in any case identified by the specified party, through a risk assessment, as one where there is a high risk of commission of a financial offence or from information provided to the specified party by a supervisory authority from the risk assessment or as part of supervision;
- (b) in any business relationship or transaction established in high risk jurisdiction or at the instance of an international organisation;
- (c) when undertaking a transaction for a high risk business;
- (d) if the specified party has established that the customer or prospective customer is a prominent influential person in accordance with section 22;
- (e) in any case where the transaction —
 - (i) is complex and unusually large, or there is an unusual pattern of transactions, or
 - (ii) has no apparent economic or legal purpose;
- (f) from transactions relating to beneficiaries of life insurance or other investment related insurance policies in accordance with section 23;
- (g) in relation to a specified party that is a financial institution, when providing correspondent banking services in accordance with section 24;
- (h) in any case where the Financial Action Task Force has advised that measures should be taken in relation to a country as the country poses a threat to the international financial system; and
- (i) in any case where the Agency has reasonable belief that there is a risk that financial offences are being carried on in the country.

(2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 500 000, as may be imposed by the supervisory authority.

22. (1) A specified party shall, in accordance with its risk management systems and compliance programme, establish whether a customer or beneficial owner of a customer is a prominent influential person.

Enhanced due diligence measures relating to prominent influential persons

(2) Where a specified party determines, in accordance with its risk management systems and compliance programme, that a customer with whom it engages to establish a business relationship or the beneficial owner of that customer is a prominent influential person, the specified party or accountable institution shall —

- (a) obtain senior management approval before establishing the business relationship;
- (b) take reasonable measures to establish the source of wealth and source of funds of a customer and beneficial owner identified as a prominent influential person; and
- (c) conduct enhanced ongoing monitoring of the business relationship.

A.26

Enhanced due diligence measures relating to beneficiaries of life insurance services

23. (1) Where a person is a beneficiary of a life insurance service a specified party shall, in accordance with its risk management systems and compliance programme, establish —

- (a) the identity of the beneficiary at the time of payout;
- (b) the identity of the beneficial owner if the beneficiary is a legal person or arrangement; or
- (c) before any payment is made under the life insurance, whether one or more beneficiaries is a prominent influential person or whether beneficial owner of the beneficiary of the life insurance policy is a prominent influential person.

(2) A specified party shall, at the inception stage, obtain sufficient information concerning the beneficiary to satisfy itself that it will be able to verify the identity of the beneficiary at the time of payout.

(3) Where a specified party establishes that a beneficiary is a prominent influential person or beneficial owner of a beneficiary is a prominent influential person, the specified party shall obtain approval of senior management before it pays out any sums under the insurance policy.

(4) A specified party shall conduct enhanced ongoing monitoring of the business relationship relating to provision of life insurance services.

(5) Where a beneficial owner of a beneficiary is a prominent influential person and has been identified to be high risk, a specified party shall conduct enhanced due diligence on the business relationship with the policy holder and consider reporting a suspicious transaction to the Agency.

Enhanced due diligence measures relating to cross-border correspondent banking

24. (1) A financial institution that provides cross-border correspondent banking services shall, in addition to measures required under section 20 —

- (a) gather sufficient information about a respondent bank to understand the nature of the respondent's bank business;
- (b) determine, from publicly available information from credible sources, the reputation of the respondent bank it proposes to enter into a correspondent banking relationship with, including —
 - (i) the quality of supervision to which the respondent bank is subject, and
 - (ii) whether the respondent bank has been subject to —
 - (aa) investigation with respect to the commission of a financial offence, or
 - (bb) regulatory action for non-compliance with counter financial offence measures;
- (c) assess the respondent institution's counter financial offence controls;
- (d) be satisfied that the respondent bank has conducted customer due diligence on the customers having direct access to accounts of the correspondent financial institution;
- (e) be satisfied that a respondent bank does not permit its accounts to be used by a shell financial institution;

- (f) be satisfied that the respondent bank has provided relevant customer due diligence information upon request to a correspondent financial institution;
 - (g) obtain approval from senior management before establishing a new correspondent relationship; and
 - (h) have clear understanding of the counter financial offence responsibilities of each correspondent financial institution.
- (2) With respect to a “payable through” account, a financial institution shall be required to ensure that the respondent bank —
- (a) has performed customer due diligence obligations on a customer that has direct access to the accounts of the correspondent financial institution; and
 - (b) is able to provide relevant customer due diligence information upon request to the correspondent financial institution.
- (3) For the purposes of subsection (2), a “payable through” account means correspondent accounts that are used directly by a third party to transact business on their own behalf.

25. (1) A specified party shall not establish or maintain an anonymous account or any account in a fictitious or false name.

Prohibition of anonymous accounts

(2) A specified party that fails to comply with the provisions of this section is liable to —

- (a) an administrative fine not exceeding P10 000 000;
 - (b) a suspension or revocation of licence as the case may be; or
 - (c) both penalties provided under paragraphs (a) and (b),
- as may be imposed by the supervisory authority.

(3) A person who authorises the establishment or maintenance of an anonymous account or any account in a fictitious or false name, contrary to the provisions of this section, commits an offence and is liable to fine not exceeding P 5000 000 or to imprisonment for a term not exceeding 10 years or to both.

26. (1) A specified party shall not establish or maintain a relationship with a shell bank.

Prohibition of shell banks

(2) A specified party shall not establish, maintain, administer, or manage a correspondent account in Botswana for, or on behalf of, a foreign shell bank.

(3) A specified party that fails to comply with the provisions of this section commits an offence and is liable to —

- (a) an administrative fine not exceeding P20 000 000;
 - (b) a suspension or revocation of licence as the case may be; or
 - (c) both penalties provided under paragraphs (a) and (b),
- as may be imposed by a supervisory authority.

(4) A person who authorises —

- (a) the establishment or maintenance of a shell bank, contrary to the provisions of subsection (1); or

Prohibition of establishing or maintaining business relationship with terrorist or member of terrorist group

(b) the establishment, maintenance, administration, or management of a correspondent account in Botswana for, or on behalf of, a foreign shell bank, contrary to the provisions of subsection (2), commits an offence and is liable to fine not exceeding P5000 000 or to imprisonment for a term not exceeding 10 years or to both.

27. (1) A specified party or accountable institution shall not establish or maintain a business relationship with a designated or nationally listed person.

(2) A specified party shall not establish, maintain, administer, or manage a correspondent account in Botswana for, or on behalf of a designated or nationally listed person.

(3) A specified party or accountable institution that fails to comply with the provisions of this section is liable to —

- (a) to an administrative fine not exceeding P20 000 000;
- (b) to a suspension or revocation of licence as the case may be; or
- (c) to both penalties provided under paragraphs (a) and (b), as may be imposed by the supervisory authority.

Simplified customer due diligence measures

28. (1) A specified party may apply simplified customer due diligence measures to a particular business relationship or transaction where the risk of commission of a financial offence is considered to be low taking into account —

- (a) the risk assessment carried out in terms of section 13;
- (b) any guidance notes issued by a supervisory authority under section 49 (1) (c); and
- (c) a National Risk Assessment.

(2) A specified party under subsection (1) may —

- (a) verify the identity of the customer and the beneficial owner after the establishment of the business relationship;
- (b) reduce the frequency of customer identification updates;
- (c) reduce the degree of on-going monitoring and scrutinising of transactions; and
- (d) not require specific information or carry out specific measures to understand the purpose and intended nature of the business relationship, but shall infer the purpose and nature from the type of transaction or business relationship established.

(3) A specified party shall not carry out simplified customer due diligence measures where —

- (a) there is suspicion of a commission of a financial offence;
- (b) in terms of its risk assessment, the business relationship or transaction no longer poses a low risk of a commission of a financial offence;
- (c) if it doubts the veracity or accuracy of any documents or information previously obtained for the purposes of identification or verification; or
- (d) any of the conditions set out in section 21 apply.

- 29.** (1) A specified party shall monitor —
- (a) a complex transaction, unusual transaction or unusual pattern of transactions, which has no apparent economic or apparent lawful purpose;
 - (b) a business relationship formed in a high risk jurisdiction; and
 - (c) transactions for high risk businesses.
- (2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 500 000, as may be imposed by the supervisory authority.

Monitoring complex, unusual and high risk transactions

- 30.** (1) Where a specified party is unable to —
- (a) conclude a transaction in the course of a business relationship or perform any act to give effect to a single transaction; and
 - (b) obtain the information contemplated in section 20; or
 - (c) establish and verify the identity of the customer or other relevant person in accordance with section 20,
- the specified party shall terminate an existing business relationship with a customer upon written notice to the customer.
- (2) A specified party that terminates an existing business relationship in accordance with subsection (1) shall report such business relationship as a suspicious transaction to the Agency.

Failure to complete customer due diligence

PART V — *Keeping of Records*

- 31.** (1) A specified party shall maintain records obtained through customer due diligence measures, accounts files and business correspondence and results of any analysis undertaken including records of —
- (a) the identity of the customer;
 - (b) if the customer is acting on behalf of another person —
 - (i) the identity of the person on whose behalf the customer is acting, and
 - (ii) the customer's authority to act on behalf of that other person;
 - (c) if another person is acting on behalf of the customer;
 - (i) the identity of that other person, and
 - (ii) that other person's authority to act on behalf of the customer;
 - (d) the manner in which the identities of the persons referred to in paragraphs (a), (b) and (c) were established;
 - (e) the nature of the business relationship or transaction;
 - (f) the amount involved in the transaction and the parties to the transaction;
 - (g) all accounts that are involved in a transaction concluded by a specified party in the course of a business relationship or single transaction;
 - (h) the name of the person who obtained the information referred to under paragraphs (a), (b) and (c) on behalf of the specified party; and

Keeping of records

A.30

- (i) any document or copy of a document obtained by the specified party in order to verify a person's identity.
 - (2) Records kept in terms of subsection (1) may be kept in electronic form.
 - (3) A specified party shall ensure that all customer due diligence information and transaction records are kept up to date and made available swiftly to a competent authority upon appropriate authority.
- 32.** (1) A specified party shall, for 20 years —
- (a) from the date a transaction is concluded maintain all records on domestic and international transactions; and
 - (b) after the termination of a business relationship or an occasional transaction keep records obtained through customer due diligence measures, account files and business correspondences and the results of any analysis undertaken.
- (2) Notwithstanding the generality of subsection (1), an investigatory authority may by request in writing, require a specified party to keep and maintain a record referred to under section 31 for such longer period as may be specified in the request.
- 33.** (1) The duty imposed under section 31 on a specified party may be performed by a third party on behalf of the specified party.
- (2) Where a specified party appoints a third party to perform duties imposed under section 31, the specified party shall forthwith provide the supervisory authority with such particulars of the third party as may be prescribed.
- (3) Where a third party fails to perform the duties imposed under section 31 the specified party shall be liable for the failure.
- 34.** An electronic record kept in accordance with section 31 shall, subject to the Electronic Records (Evidence) Act, be admissible as evidence in court.
- 35.** (1) A specified party that fails to keep records in accordance with sections 31 and 32 is liable to an administrative fine not exceeding P500 000, as may be imposed by the supervisory authority.
- (2) A person who destroys or removes any record, register or document kept in accordance with this Part commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years or to both.
- 36.** (1) An examiner of the Agency or supervisory authority shall have access to any record kept in accordance with section 31 and may make extracts from or copies of any such records.
- (2) The Agency or a supervisory authority, may at any time cause to be carried out on the business premises of a specified party an examination and an audit of its books and records to check whether the specified party is complying with the requirements of this Act, or any guidelines, instructions or recommendations issued under this Act.
- (3) For the purposes of subsection (2), an examiner may —

Period of record keeping

Records kept by third party

Admissibility of electronic records
Cap. 11:06

Offences relating to records

Access to records of specified party

- (a) by request in writing or orally require the specified party or any other person whom the Agency or supervisory authority reasonably believes has in its possession or control a document or any other information that may be relevant to the examination to produce the document or furnish the information as specified in the request;
- (b) examine, and make copies of or take extracts from, any document or thing that he considers may be relevant to the examination;
- (c) retain any document it deems necessary; and
- (d) orally or in writing, require a person who is or apparently is an officer or employee of the specified party to give information about any document that an examiner considers may be relevant to the examination.

(4) The specified party, its officers and employees shall give the examiner full and free access to the records and other documents of the specified party as may be reasonably required for the examination.

(5) A person who —

- (a) intentionally obstructs the examiner in the performance of any of his duties under this section; or
- (b) fails, without reasonable excuse, to comply with a request of the examiner in the performance of the examiner's duties under this section,

commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years or to both.

(6) For the purposes of this section, an “examiner” means a person designated as such in writing by the Agency or the supervisory authority.

(7) Notwithstanding the provisions of subsections (1) to (6), an authorised officer of an investigatory authority may apply to court for a warrant to exercise powers set out under this section.

(8) The court shall issue a warrant under subsection (7) where it is satisfied, from information on oath or affirmation, that there are reasonable grounds to believe that the records may assist the investigatory authority to prove the commission of a financial offence.

37. The Agency may initiate an analysis of information on its own initiative based on information in its possession or information received from other sources to ascertain whether a transaction is a suspicious transaction.

Analysis of
information

PART VI — *Reporting Obligation and Cash Transactions*

38. (1) A specified party or accountable institution shall, within such period as may be prescribed, report a suspicious transaction to the Agency.

Reporting of
suspicious
transactions

(2) A specified party or accountable institution shall report a suspicious transaction —

- (a) during the establishment of a business relationship;

(b) during the course of the business relationship; or

(c) when conducting occasional transactions.

(3) An attorney, conveyancer, notary public or accountant shall report a suspicious transaction when, on behalf of or for a client, he or she engages in a financial transaction in relation to the following activities —

(a) buying and selling of real estate;

(b) managing client money, securities or assets;

(c) managing bank savings or securities accounts;

(d) organisation of contributions for the creation, operation or management of companies; or

(e) creation, operation or management of legal persons or arrangements, trusts and the buying and selling of shares.

(4) Nothing in subsection (3) shall be construed as restricting an attorney from reporting a suspicious transaction of which he or she has acquired knowledge in privileged circumstances if the transaction is communicated to the attorney with a view to the furtherance of a criminal or fraudulent purpose.

(5) For the purposes of this section, “attorney” has the same meaning assigned to it under the Legal Practitioners Act.

(6) A specified party or accountable institution that fails to comply with the provisions of this section is liable to —

(a) an administrative fine not exceeding P5 000 000;

(b) a suspension or revocation of licence as the case may be; or

(c) both penalties provided under paragraphs (a) and (b),

as may be imposed by the supervisory authority.

39. (1) Notwithstanding the provisions of section 38, a specified party shall, within such period, report to the Agency, prescribed particulars concerning a transaction concluded with a customer where in terms of the transaction an amount of cash equal to or in excess of such amount as may be prescribed —

(a) is paid by the specified party to the customer, to a person acting on behalf of the customer or to a person on whose behalf the customer is acting; or

(b) is received by the specified party or from the customer, the person acting on behalf of the customer or a person on whose behalf the customer is acting.

(2) A specified party that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P1 000 000, as may be imposed by a supervisory authority.

40. (1) A person who carries on, is in charge of, manages, or is employed by a business, shall make a report to the Agency, of any transaction which he or she has reason to believe may be a suspicious transaction.

(2) A person who accepts any payment in cash in excess of such amount as may be prescribed or an equivalent amount in foreign currency shall report such particulars as may be prescribed to the Agency.

Cap. 61:01

Cash transactions above prescribed limit

General reporting

41. Subject to the Customs Act and Excise Duty Act, the Botswana Revenue Service Authority shall forward to the Agency records of cash or any bearer negotiable instrument in excess of the prescribed limit, conveyed into or out of Botswana, in such form as may be prescribed.

Conveyance
of cash
Cap. 50:02
Cap. 50:01

42. (1) A financial institution that through electronic transfer, receives into or sends out of Botswana money equal to or in excess of the prescribed amount on behalf or on the instruction of a customer or any person, shall report to the Agency such particulars of the transfer as may be prescribed.

Wire transfer

(2) A financial institution shall not undertake a wire transfer otherwise than in the manner as may be prescribed.

(3) A financial institution that fails to comply with the provisions of this section is liable to an administrative fine not exceeding P5 000 000, as may be imposed by the supervisory authority.

43. A suspicious transaction report made under this Part shall be in such form as may be prescribed, and shall include —

Content of
suspicious
transaction
report

- (a) the identification of the customer and other party to the transaction;
- (b) the description of the nature of the transaction;
- (c) the amount of the transaction;
- (d) circumstances giving rise to the suspicion;
- (e) the business relationship of the customer to the person making the report;
- (f) where the customer is an insider, whether such customer is still affiliated with the specified party;
- (g) any voluntary statement as to the origin, source or destination of the proceeds;
- (h) the impact of the suspicious transaction on the financial soundness of the specified party; and
- (i) the names of all the officers, employees or agents dealing with the transaction.

44. A specified party, accountable institution or person who makes a report under this Part may continue with or carry out the transaction in respect of which the report has been made unless the report is made in terms of section 20 (10) or the Agency directs otherwise.

Continuation
of transaction

45. The Director General shall, where he or she has reasonable grounds to suspect that a transaction may involve the commission of a financial offence, direct in writing, a specified party, an accountable institution, the person who made the report or the person or bodies who have connections with such transactions —

Interruption
of transaction
by Agency

- (a) not to proceed with the transaction for such period not exceeding 15 working days as shall be stated in the notice;
- (b) to monitor the account; and
- (c) to submit a monitoring report to the Agency within 10 working days,

in order to allow the Agency, to make the necessary enquiries concerning the transaction, or if the Agency deems it appropriate, to inform and advise an investigatory authority.

A.34

Offences relating to reporting

46. (1) A specified party or accountable institution that fails to make a report under this Part or continues with a transaction in contrary to the provisions of section 45 is liable to —

- (a) an administrative fine not exceeding P5 000 000;
 - (b) a suspension or revocation of licence or registration as the case may be; or
 - (c) both penalties provided under paragraphs (a) or (b),
- as may be imposed by the supervisory authority.

(2) A person who fails to make a report under this Part or continues with a transaction in contravention of section 45 commits an offence and is liable to a fine not exceeding P3 000 000 or to imprisonment for a term not exceeding 20 years, or to both.

(3) A person who knows or suspects that a suspicious transaction report is being made to the Agency shall not disclose to any other person information or any other matter which is likely to prejudice any proposed investigation or disclose that the Agency has requested further information under section 52 (1).

(4) A person who contravenes the provision of subsection (3) commits an offence and is liable to a fine not exceeding P2 000 000 or to imprisonment for a term not exceeding 15 years, or to both.

Indemnity of person making report

47. (1) Any civil or criminal proceedings shall not lie against any person for having —

- (a) reported in good faith, any suspicion he or she may have had, whether or not the suspicion proves to be well founded following investigation; or
- (b) supplied any information to the Agency pursuant to a request made under section 52 (1).

(2) No evidence concerning the identity of a person who has made, initiated or contributed to a report under this Part or who has furnished additional information concerning the report shall be admissible as evidence in proceedings before a court unless the person testifies at the proceedings.

Offences for non-compliance

48. A member of senior management of a specified party or accountable institution who fails to comply with anti-money laundering and counter financing of terrorism measures under this Act, commits an offence and is liable to a fine not exceeding P250 000, or imprisonment for a term not exceeding five years, or to both.

PART VII — *Referral, Suspension and Exchange of Information*

Obligations of supervisory authorities

49. (1) A supervisory authority shall —

- (a) through its licensing or registration requirements, implement measures, including fit and proper measures to prevent criminals from —
 - (i) holding controlling interest,
 - (ii) performing management function, or
 - (iii) being a beneficial owner, of the applicant;

- (b) regulate and supervise a specified party or accountable institution for compliance with this Act including through on-site examinations;
 - (c) in consultation with the Agency, establish and issue guidance notes, and provide feedback to help a specified party or accountable institution comply with this Act;
 - (d) maintain statistics concerning compliance measures adopted or implemented by the specified party or accountable institution and sanctions imposed on such specified party or accountable institution, under this Act;
 - (e) conduct risk-based supervision of anti-money laundering, counter-financing of an act of terrorism and counter-financing of proliferation and counter illicit dealing in arms or ammunition on a specified party;
 - (f) review the assessment of the money laundering, terrorist financing and financing of proliferation risk profile of a specified party or accountable institution, including risks of non-compliance periodically, and when there are major events or developments in the management and operations of a specified party or accountable institution;
 - (g) identify, assess and understand international and domestic money-laundering, terrorist financing and proliferation financing risks in the sector;
 - (h) apply consolidated group supervision to all aspects of business conducted by the group, as may be prescribed; and
 - (i) ensure that the frequency and intensity of on-site and off-site is determined on the basis of —
 - (i) financial offence risks,
 - (ii) internal controls and procedures associated with the institution or group, and
 - (iii) documented financial offence risks present in the country.
- (2) A supervisory authority may —
- (a) issue a directive, penalising a specified party by imposing an appropriate, prescribed fine where the specified party has without reasonable excuse, failed to comply in whole or in part with any obligations under this Part; or
 - (b) enter into an agreement with a specified party to implement an action plan to ensure compliance of the specified party's obligations under this Act.
- (3) With respect to supervision of a non-profit organisation, a supervisory authority shall —
- (a) undertake outreach and educational programmes to raise and deepen awareness among non-profit organisations as well as the donor community about the potential vulnerabilities of a non-profit organisation to commission of a financial offence risks and the measures that a non-profit organization can take to protect themselves against such abuse;

- (b) work with a non-profit organization to develop and refine best practices to address commission of financial offence risks and vulnerabilities, to protect such a non-profit organisation from financial offence abuse;
- (c) conduct targeted supervision and monitoring on a non-profit organisation at risk of commission of a financial offence abuse; and
- (d) monitor the compliance on a non-profit organisation with the provisions of this Act, including applying risk based measures to such a non-profit organisation.

4. With respect to a specified party that relies on a third party, that is part of the same financial group, a supervisory authority shall ensure that —

- (a) the group applies —
 - (i) customer due diligence and record-keeping requirements, in accordance with sections 16, 20, 22 and 31 of this Act, and
 - (ii) programmes to combat commission of a financial offence, in accordance with section 14 of this Act; and
- (b) the implementation of customer due diligence and record-keeping requirements and anti money laundering, counter financing of terrorism and counter financing of proliferation programmes are supervised at a group level; and
- (c) a higher country risk is adequately mitigated by the group’s anti money laundering, counter financing of terrorism and counter financing of proliferation policies.

50. Any person responsible for licensing a specified party or an accountable institution who negligently fails to take such reasonable measures referred to in section 49 (1) (a) commits an offence and is liable to a fine not exceeding P250 000 or imprisonment for a term not exceeding five years, or to both.

Offence for failure to prevent criminals from holding controlling interest

Obligations of accountable institutions

- 51.** (1) An accountable institution shall —
- (a) with respect to a non-profit organisation —
 - (i) have relevant documentation that explains its intended purpose and objectives,
 - (ii) maintain proper record keeping of financial statements and issue annual financial statements that provide detailed breakdown of income and expenditure, and make the financial statements swiftly available to a competent authority upon appropriate authority,
 - (iii) have controls in place to ensure that all funds are fully accounted for and utilised in a manner consistent with intended purposes and objectives,
 - (iv) maintain a record of domestic and international transactions,
 - (v) apply specific counter measures proportionate to the risk as may be directed by the supervisory authority,

- (vi) hold basic information on other regulated agents and service providers of the non-profit organisation, including investment advisors, managers, donor, accountants and tax advisors,
 - (vii) conduct transactions through regulated financial channels, wherever feasible,
 - (viii) identify a person who owns, controls or direct their activities including a senior officer, board member and a trustee, and
 - (ix) take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate non-profit organisations and that they are not involved with or using the charitable funds to finance acts of terror or support terrorists or terrorist organisations; and
- (b) with respect to a trustee of a trust, obtain and hold adequate, accurate and current information on the identity of —
- (i) the settlor,
 - (ii) a trustee,
 - (iii) a protector, if any,
 - (iv) a beneficiary of a trust, a class of beneficiaries or any other natural person exercising ultimate effective control over a trust, and
 - (v) other regulated agents of, and service providers to the trust, including investment advisors or managers, donor, accountants and tax advisors.

(2) For purposes of this section, associate non-profit organisation includes foreign branches of an international non-profit organisation, and a non-profit organisation with which partnerships have been arranged.

(3) Any record obtained and maintained under this section shall be kept for 20 years.

(4) An accountable institution that fails to comply with the provisions of this section is liable to —

- (a) an administrative fine not exceeding P500 000;
- (b) cancellation of registration or licencing, as the case may be; or
- (c) to both penalties provided under paragraphs (a) and (b),

as may be imposed by the supervisory authority.

52. (1) The Agency may, for the purposes of assessing whether any information should be disseminated to an investigatory or supervisory authority, request further information in relation to a suspicious transaction from —

- (a) the specified party or person who made the report;
- (b) any other specified party that is, or appears to be involved in the transaction;
- (c) an investigatory authority;
- (d) a supervisory authority;
- (e) any other administrative agency of the Government; or
- (f) an accountable institution which made the report.

Receipt of
information
by Agency

(2) The information requested under subsection (1) shall be provided without a court order within a reasonable time but not later than 10 working days after the request is made.

(3) Where any information referred to under subsection (1) is required to be supplied to the Agency within a specified period, the Agency may, at the request of the person or body concerned, extend such period.

(4) A person who refuses to supply information requested under this section commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment to a term not exceeding 10 years or to both.

Referral of
information
by Agency

53. (1) Where the Agency, on the basis of its analysis and assessment of information received by it, has reasonable grounds to suspect that the information would be relevant to the national security of Botswana, the Agency shall disclose the information to the Directorate.

(2) The Agency shall record in writing, the reasons for its decision to disclose information in accordance with subsection (1).

(3) Where the Agency becomes aware of information which may be relevant to —

- (a) the functions of any supervisory authority;
- (b) investigation or prosecution being conducted by an investigatory authority; and
- (c) a possible corruption offence, as defined in the Corruption and Economic Crime Act,

Cap. 08:05

the Agency shall disclose the information to the supervisory authority or investigatory authority concerned.

(4) “information” in relation to a financial transaction or the import and export of currency or monetary instruments includes —

- (a) the name of the person or the importer or exporter or any other person or entity acting on their behalf;
- (b) the name and address of the place of business where the transaction occurred or the address of the port of entry into Botswana where the importation or exportation occurred;
- (c) the date of the transaction, importation or exportation;
- (d) the amount and type of currency or monetary instruments involved or in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;
- (e) in the case of a transaction, the transaction number and the account number if any; and
- (f) such other identification information as may be prescribed.

(5) Where any information falling within subsections (1) and (4) was provided to the Agency by a body outside Botswana on terms of confidentiality, the Agency shall not disclose the information without the consent of the body that provided the information.

(6) The Agency may request a supervisory authority to rebut information indicating that a specified party has as a result of a transaction concluded by or with the specified party, received or is about to receive the proceeds of a financial offence.

(7) Information requested under subsection (6) shall be provided without a court order and within such time limits as may be prescribed.

54. A supervisory authority shall where in the course of the exercise of its functions, it receives or otherwise becomes aware of any information suggesting the possibility of a commission of a financial offence, advise the Agency.

Referral of information by supervisory authority

55. (1) The Agency shall be the only body in Botswana which shall seek recognition by the Egmont Group or comparable body to exchange financial intelligence information on the basis of reciprocity and mutual agreement.

Membership of international financial organisation

(2) The Agency may exchange expertise and financial intelligence with other members of the Egmont Group or comparable body in accordance with the conditions for such exchanges established by the Egmont Group.

(3) Without prejudice to subsections (1) and (2), where the Agency becomes aware of any information which may be relevant to the functions of a comparable body, it may disclose the information to the comparable body under conditions of confidentiality.

(4) Where a request for information is received from a comparable body, the Agency shall disclose any relevant information in its possession to the comparable body, on such terms of confidentiality as may be agreed between the Agency and the comparable body.

(5) The Agency shall maintain a record in such form as may be prescribed, of —

- (a) statistics on the number of information disclosed to a comparable body;
- (b) the number of requests of financial information from a comparable body;
- (c) suspicious transactions reports received and disseminated;
- (d) investigations of financial offence;
- (e) prosecutions and convictions of financial offences;
- (f) property frozen, seized and confiscated regarding financial offences; and
- (g) mutual legal assistance or other international requests for co-operation.

56. A certificate issued by the Agency that information specified in the certificate was reported to the Agency shall be admitted in evidence in court without proof or production of the original report.

Certificate issued by Agency

57. (1) No person shall be entitled to information held by the Agency except information disclosed in accordance with this Act.

Information held by Agency

(2) A person shall not disclose confidential information held by or obtained by the Agency except —

- (a) within the scope of that person's power and duties in terms of any legislation;
 - (b) for the purposes of carrying out the functions of this Act; and
 - (c) with the permission of the Director General.
- (3) A person who contravenes the provisions of subsection (2) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment to a term not exceeding 10 years or to both.

PART VIII — *General Provisions*

Confidentiality
by Director
General, etc.

- 58.** (1) The Director General and other officers of the Agency shall —
- (a) before they begin to perform any duties under this Act, take an oath of confidentiality in such form as may be prescribed; and
 - (b) during and after their relationship with the Agency, maintain the confidentiality of any confidential information acquired in the discharge of their duties under this Act.
- (2) Any information from which an individual or body can be identified, which is acquired by the Agency in the course of carrying out its functions shall not be disclosed by the Director General or other officer of the Agency, except where the disclosure is necessary —
- (a) to enable the Agency to carry out its functions;
 - (b) in the interests of the prevention or detection of any other offence;
 - (c) in connection with the discharge of any international obligation to which Botswana is subject; or
 - (d) pursuant to an order of court.
- (3) Where the Director General or officer of the Agency contravenes this section he or she commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding three years, or to both.

Confidentiality
by third parties

- 59.** (1) A person shall not disclose confidential information received from the Agency.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both.

Indemnity of
Director
General, etc.

- 60.** (1) No matter or thing done or omitted to be done by the Director General, an officer of the Agency, supervisory authority, a specified party, accountable institution, relevant government agency or department shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of the Agency, supervisory authority, a specified party, accountable institution, government agency or department, shall render the Director General, the officer of the Agency, the specified party, accountable institution, government agency or department its directors or senior management personally liable to an action, claim or demand.

(2) The Director General, officer of the Agency, a specified party, accountable institution, relevant government agency or department, its directors or senior management who receives or makes a report under this Act shall not incur liability for any breach of confidentiality or any disclosure made in compliance with this Act.

61. (1) The Minister may by order published in the *Gazette*, amend the Schedule I and III to this Act.

Power to
amend
Schedules

(2) The Minister shall, before amending Schedule I and III, give the affected persons at least 60 days' written notice to submit to the Minister written submissions on the proposed amendment.

62. (1) The Director General shall, on or before 31st March in each year, or by such later date as the Minister may allow, submit to the Minister a report on the activities of the Agency in the previous year.

Annual report

(2) A report referred to in subsection (1) shall be laid in Parliament by the Minister within three months of receipt.

63. (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) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) reporting obligations of a specified party and accountable institution;
- (b) regulatory obligations of a supervisory authority;
- (c) measures to ensure the security of information disclosed by or to the Agency;
- (d) internal rules to be formulated and implemented under sections 13, 14 and 15; or
- (e) the manner and form which a specified party and an accountable institution shall keep records required under this Act.

(3) Any person who contravenes the provisions of the Regulations made under this Act, where a penalty is not provided, commits an offence and is liable to —

- (a) a fine not exceeding P100 000;
- (b) imprisonment for a term not exceeding five years;
- (c) both penalties specified at paragraphs (a) and (b); or
- (d) such administrative fine not exceeding P100 000, as may be imposed by a supervisory authority.

64. (1) The Financial Intelligence Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

Repeal of
Cap. 08:07

65. (1) Notwithstanding the repeal effected under section 64, any instrument made under the repealed Act shall continue to have effect, as if made under this Act, to the extent that it is not inconsistent with this Act.

Savings

(2) Any person who is an officer or employee of the Agency immediately before the coming into operation of this Act shall continue in office for the period for which, and subject to the conditions under which he or she was appointed as an officer in the public service.

(3) Any enquiry or disciplinary proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced by or against the Agency in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(4) Any legal proceedings in respect of any offence committed or alleged to be committed under the repealed Act shall be carried out or prosecuted as if commenced under this Act.

(5) Any fines imposed by a supervisory authority under the repealed Act, shall continue as if imposed under this Act.

(6) Any decision or action taken or purported to have been taken or done by the Director General or supervisory authority under the provisions of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been taken or done under the corresponding provisions of this Act.

SCHEDULE I
Specified Parties
(section 2)

1. An attorney as defined in the Legal Practitioners Act, Cap. 61:01, when preparing for or carrying out transaction for clients concerning the following —
 - (a) buying and selling of real estate;
 - (b) managing of client money, securities or other assets;
 - (c) management of bank, savings or securities accounts;
 - (d) organisation of contributions for creation, operation or management of companies; and
 - (e) creating, operating or management of legal persons or arrangements and buying and selling of business entities.
2. An accountant as defined under the Accountants Act, Cap. 61:05, when preparing for or carrying out transaction for clients concerning the following —
 - (a) buying and selling of real estate;
 - (b) managing of client money, securities or other assets;
 - (c) management of bank, savings or securities accounts;
 - (d) organisation of contributions for creation, operation or management of companies; and
 - (e) creating, operating or management of legal persons or arrangements and buying and selling of business entities.
3. A registered professional as defined under the Real Estate Professionals Act, Cap. 61:07, when involved in transactions for client concerning buying and selling of real estate.
4. A bank as defined under the Banking Act, Cap. 46:04
5. A bureau de change as defined under the Bank of Botswana Act, Cap. 55:01
6. A building society as defined under the Building Societies Act, Cap. 42:03
7. A casino as defined under the Gambling Act, Cap. 19:01
8. A Non-Bank Financial Institution as defined in the Non-Bank Financial Institutions Regulatory Authority Act, Cap. 46:08
9. A person running a lottery under the Lotteries and Betting Act, Cap. 19:02
10. The Botswana Postal Services established under the Botswana Postal Services Act, Cap. 72:01
11. A precious stones dealer as defined under the Precious and Semi-Precious Stones (Protection) Act, Cap. 66:03
12. A semi-precious stones dealer as defined under the Precious and Semi-Precious Stones (Protection) Act, Cap. 66:03
13. Botswana Savings Bank established under Botswana Savings Bank Act, Cap. 56:03
14. Citizen Entrepreneurial Development Agency
15. Botswana Development Corporation
16. National Development Bank established under the National Development Bank Act, Cap. 74:05
17. A car dealership
18. A Money or value transfer services provider

A.44

19. An electronic Payment Service Provider
20. A trust and company service provider
21. A savings and credit co-operative
22. A precious metal dealer as defined under the Unwrought Precious Metals Act,
Cap. 20:03
23. A virtual asset service provider.

SCHEDULE II
Supervisory Authorities
(*section 2*)

1. The Bank of Botswana established under the Bank of Botswana Act, Cap. 55:01
2. The Real Estate Advisory Council established under the Real Estate Professionals Act, Cap. 61:07
3. The Gambling Authority established under the Gambling Act, Cap. 19:01
4. The Law Society of Botswana established under the Legal Practitioners Act, Cap. 61:01
5. Non-Bank Financial Institutions Regulatory Authority, established under the Non-Bank Financial Institutions Regulatory Authority Act, Cap. 46:08
6. Registrar of Societies established under the Societies Act, Cap. 8:01
7. Botswana Institute of Chartered Accountants established under the Accountants Act, Cap. 61:05
8. The Botswana Accountancy Oversight Authority established under the Financial Reporting Act, Cap. 46:10
9. The Diamond Hub
10. The Director of Cooperative Development established under Co-operative Societies Act, Cap. 42:04
11. The Master of the High Court
12. The Department of Mines

A.46

SCHEDULE III

Accountable Institutions
(section 2)

- (1) Any society, association or non-profit organisation registered under the Societies Act or any other law
- (2) a trustee

PASSED by the National Assembly this 3rd day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

VIRTUAL ASSETS ACT, 2022

No. 3



of 2022

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title
2. Interpretation
3. Application of Act

PART II — *Functions and Powers of the Regulatory Authority*

4. Functions of Regulatory Authority
5. Request for information
6. Appointment of inspectors
7. Right of entry

PART III — *Licensing of Virtual Asset Businesses*

8. Virtual asset business
9. Prohibition of unlicensed virtual asset business
10. Application for licence
11. Issue of licence
12. Request to cease virtual asset business
13. Suspension or revocation of licence
14. Notice of intention to suspend or revoke licence
15. Suspension or revocation of licence without notice
16. Notification of revocation, winding up etc.
17. Assignment and transfer of licence or beneficial ownership
18. Information on assignment and transfer of licence or beneficial ownership
19. Register of virtual asset service providers and issuers of initial token offerings

PART IV — *Obligations of Licence Holders*

20. Custody and protection of customer assets
21. Prevention of market abuse
22. Acquisition of beneficial interest in licence holder
23. Offer of virtual assets
24. Issuance of white paper
25. Classification of virtual assets

PART V — *Professional Conduct and Compliance of Licence Holders*

26. Professional conduct of licence holders
27. Confidentiality of customer information
28. Data protection
29. Audited financial statements
30. Material change to business activities

PART VI – *General Provisions*

31. General offences and penalties
32. Onus of proof
33. Administrative sanctions
34. Appeals against decisions of Regulatory Authority
35. Transitional provisions
36. Regulations

An Act to regulate the sale and trade of virtual assets, licensing of virtual asset service providers and issuers of initial token offerings, and to provide for matters connected, incidental and related thereto.

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

| | |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Short title | 1. This Act may be cited as the Virtual Assets Act, 2022. |
| Interpretation | 2. (1) In this Act, unless the context otherwise requires — “asset” means a property of any kind; “asset token” means a token that represents a claim against the issuer which — <ol style="list-style-type: none"> (a) is intended to represent an asset and is embedded with underlying assets; (b) derives its value by reference to an underlying asset; (c) is secured by an underlying asset; or (d) is backed up by assets held as collateral for the primary purpose of encouraging price stability; |
| Cap. 08:07 | “beneficial owner” has the meaning assigned to it in the Financial Intelligence Act, and “beneficial interest” shall be construed accordingly; |
| Cap. 55:01 | “blockchain” means a virtual or digital distributed ledger or database of transactions relating to virtual assets which are recorded chronologically and capable of being audited; |
| | “Central Bank” means the Bank of Botswana established under the Bank of Botswana Act; |

- “comparable body” a body outside Botswana which has functions similar to those of the Regulatory Authority with respect to the regulation and licensing of a virtual asset business;
- “competent authority” has the meaning assigned to it under the Financial Intelligence Act;
- “customer” has the meaning assigned to it in the Financial Intelligence Act;
- “distributed ledger technology” –
- (a) means a virtual or digital ledger in which data is recorded, consensually shared and synchronised across a network of multiple nodes or sites accessible by multiple persons; and
 - (b) includes a distributed ledger technology platform or software program that operates on a blockchain or similar technology;
- “distributed ledger technology platform” means an online mechanism for the sale, trade or exchange of virtual assets offered by a virtual asset service provider to its customers;
- “fiat currency” means –
- (a) notes, coins or tokens issued into circulation by the Central Bank in terms of the Bank of Botswana Act; and
 - (b) notes, coins or money of a jurisdiction that is designated by the Government of that jurisdiction as a legal tender;
- “financial institution” has the meaning assigned to it under the Bank of Botswana Act;
- “founder” means a person who is entitled to a significant interest in the issuer or organiser, and includes a beneficial owner if different from the issuer or organiser;
- “initial token offerings” means an offer to the public, by an issuer, for the sale of a virtual token in exchange for fiat currency or another virtual asset;
- “insider” has the meaning assigned to it under the Securities Act;
- “inspector” means an inspector appointed under section 6 and includes an investigator;
- “issuer” means a person contractually responsible for issuing a virtual token;
- “licence” means a licence issued in terms of this Act;
- “licence holder” means a person issued with a licence under section 11;
- “market abuse” means –
- (a) insider dealing;
 - (b) the unlawful disclosure of insider information; or
 - (c) market manipulation in relation to any transaction, order or behaviour concerning a virtual asset;
- “non-fungible token” means a unique virtual token created for use in specific applications which cannot be –
- (a) divided and is not interchangeable with any other type of virtual token; and

- (b) sold in a secondary market;
- “offer” means a document, notice, circular, advertisement, prospectus or whitepaper issued to the public or accessible electronically –
 - (a) inviting applications or offers to subscribe for or purchase virtual assets; or
 - (b) offering virtual assets for subscription or purchase;
- “organiser” means a person who, if different from the issuer, whether alone or in conjunction with other persons, procures the issuance of virtual assets through an issuer on behalf of a customer;
- Cap. 08:03 “property” has the meaning assigned to it under the Proceeds and Instruments of Crime Act;
- Cap. 46:08 “Regulatory Authority” means the Non-Bank Financial Institutions Regulatory Authority established under the Non-Bank Financial Institutions Regulatory Authority Act;
- Cap. 56:08 “security” has the meaning assigned to it under the Securities Act;
- “significant interest” means beneficial interests cumulatively representing more than 10 per cent of the issued and outstanding equity interests of the organiser, issuer or beneficial owner;
- “virtual asset” –
 - (a) means a digital representation of value that –
 - (i) may be digitally traded or transferred, and may be used for payment or investment purposes, or
 - (ii) is distributed through a distributed ledger technology where value is embedded or in which there is a contractual right of use, and includes virtual tokens; and
 - (b) excludes –
 - (i) a digital representation of legal tender as provided for under the Bank of Botswana Act, and
 - (ii) securities and other financial assets that are regulated under the Securities Act;
- “virtual asset business” includes a trade or business –
 - (a) that operate as an issuer of initial token offerings;
 - (b) that provides services related to a virtual token exchange;
 - (c) that operates as a payment service provider utilising virtual assets;
 - (d) that operates as a virtual asset service provider, including providing a distributed ledger platform which facilitates the –
 - (i) exchange between virtual assets and fiat currency,
 - (ii) exchange between one or more forms of virtual assets, and
 - (iii) transfer of virtual assets; or

- (e) that participates in and provides financial services related to an issuer's offer or sale of a virtual asset as may be prescribed;
- “virtual asset service” means a service provided in relation to a virtual asset business or transaction;
- “virtual asset service provider” means a person who –
- (a) under an agreement, as part of a business, undertakes a virtual asset service on behalf of another person; or
 - (b) is a dealer or is willing to deal, on own account, by buying and selling virtual assets at prices set by that person, and includes a –
 - (i) market maker or liquidity provider,
 - (ii) system that provides virtual liquidity, allowing traders to buy and sell derivatives on the blockchain, or
 - (iii) virtual automated market maker;
- “virtual currency token” means a digital representation of value which is digitally traded and functions as a –
- (a) medium of exchange;
 - (b) unit of account; or
 - (c) store of value;
- “virtual token” includes a –
- (a) virtual currency token;
 - (b) asset token;
 - (c) non-fungible token; and
 - (d) any other digital representation of value designated by the Regulatory Authority to be a virtual token for purposes of this Act; and
- “virtual token exchange” means a marketplace in the distributed ledger technology platform for the sale, trade, transfer or exchange of a virtual token for fiat currency or virtual token.

(2) This Act is declared to be a financial services law for purposes of the Non-Bank Financial Institutions Regulatory Act.

3. (1) This Act shall apply to –

- (a) any person who as an organiser, issuer, founder, purchaser or investor participates in the formation, promotion, maintenance, organisation, sale or redemption of an initial token offering; and
- (b) any person carrying on a virtual asset business irrespective of the physical location from which the activity is carried out.

(2) This Act shall not apply to –

- (a) a person only by reason of that person acting in a professional capacity on behalf of persons engaged in procuring the organisation, promotion, issuance, sale or trade of virtual assets;
- (b) transactions or virtual assets in which a person grants a value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any virtual asset;
- (c) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform or game sold by the same publisher or offered on the same game platform;

Application of
Act

- (d) non-fungible tokens; or
- (e) electronic representations of fiat currency, security or any other financial asset under the Bank of Botswana Act or Securities Act.

PART II – Functions and Powers of the Regulatory Authority

Functions of
Regulatory
Authority

- 4.** (1) The Regulatory Authority shall —
- (a) license virtual asset service providers and issuers of initial token offerings;
 - (b) regulate, monitor and supervise the issuance of virtual assets and persons conducting virtual asset business in Botswana;
 - (c) develop rules, guidance and codes of practice in connection with the conduct of virtual asset business and initial token offerings;
 - (d) advise the Minister on all matters relating to virtual assets business;
 - (e) promote investor education and other conditions that facilitate innovation and development of virtual asset businesses within Botswana;
 - (f) publish notices, guidelines, bulletins and policies regarding the interpretation, application and enforcement of this Act;
 - (g) in collaboration with the Central Bank, ensure the financial soundness and stability of the financial system in Botswana in respect of virtual assets;
 - (h) give directions to, and take enforcement action against, a licence holder; and
 - (i) do such other acts and things as may be necessary for the purposes of this Act.

(2) The Minister, may, on the recommendation of the Regulatory Authority, by Order published in the *Gazette*, set up such advisory bodies as may be necessary to examine and report on any matter in respect to the administration of this Act.

Request for
information

5. (1) The Regulatory Authority may, by notice in writing, require a person to furnish to the Regulatory Authority, at such time and place and in such form as may be prescribed, information and documentation, with respect to —

- (a) a virtual asset business;
 - (b) an offer, pursuant to section 23; or
 - (c) a beneficial owner of a virtual asset business.
- (2) A person in subsection (1), may include —
- (a) any person who is, was or appears to be or to have been, a virtual asset service provider or issuer of initial token offerings;
 - (b) an agent of a virtual asset service provider or issuer of initial token offerings;
 - (c) an intermediary involved in a virtual asset service; or
 - (d) a person who issues, or appears to have issued, an offer.

(3) The Regulatory Authority may, request a virtual asset service provider or issuer of initial token offerings to appear before the Authority or a person appointed by the Regulatory Authority, at such time and place as it may specify, to answer questions and provide information and documentation with respect to a virtual asset, initial token offering or an offer issued by the virtual asset provider or issuer of initial token offerings.

(4) Where a person is appointed under subsection (3), such person shall, for the purposes of carrying out his or her functions, have all the powers conferred on the Regulatory Authority under this section, and a requirement made by such person shall be deemed to have the same force and effect as a requirement made by the Regulatory Authority.

(5) Where the person required to provide information or documentation under this section does not have the relevant information or documentation, the person shall, to the best of his or her knowledge disclose to the Regulatory Authority where that information or documentation may be found, and the Regulatory Authority may require any person who appears to be in possession of that information or documentation to provide it.

6. (1) The Regulatory Authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the activities or operations of a virtual asset business or licence holder.

Appointment
of inspectors

(2) An inspector appointed in terms of subsection (1) –

- (a) may exercise all the powers conferred on the Regulatory Authority under this Part, and any requirement made by the inspector shall have the same effect as a requirement made by the Regulatory Authority; and
- (b) shall submit a report of his or her investigations under this section to the Regulatory Authority, within one month after the conclusion of the investigations.

7. (1) An inspector appointed in terms of section 6 may, on producing evidence of his or her authority, enter premises occupied by a person on whom a notice has been issued under section 5 or whose virtual asset business is being investigated under section 6, for the purposes of –

Right of entry

- (a) obtaining information or documents required under the notice;
- (b) the investigation; or
- (c) exercising any of the powers conferred by sections 5 and 6.

(2) Where an inspector has reasonable cause to believe that if the notice to be issued in terms of section 5 would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, the inspector may, on producing evidence of his or her authority, enter any premises referred to in subsection (1) for the purpose of obtaining any information or documents, being information or documents that could have been required under such notice as is referred to under section 5.

(3) For the purposes of any action taken under the provisions of this section, the Regulatory Authority may request the assistance of the Commissioner of Police, who may for such purpose, exercise such powers as are vested in the Botswana Police Service for the prevention of offences and the enforcement of law and order.

PART III – *Licensing of Virtual Asset Businesses*

Virtual asset business

8. For purposes of this Act, a person carries on a virtual asset business if —

- (a) irrespective of their physical location, whether in or outside Botswana, the person offers a virtual asset service to persons resident in Botswana; or
- (b) the person is registered or incorporated under the laws of Botswana and offers a virtual asset service to persons in or outside Botswana.

Prohibition of unlicensed virtual asset business

9. A person shall not carry out or participate in a virtual asset business unless the person is the holder of a virtual asset service provider licence or issuer of initial token offerings licence issued in terms of section 11.

Application for licence

10. (1) A person who wishes to carry out or participate in a virtual asset business may apply for a virtual asset service provider licence or issuer of initial token offerings licence.

(2) An application in subsection (1) shall —

- (a) be in such form and manner as may be prescribed;
- (b) specify the licence applied for;
- (c) be accompanied by —
 - (i) proof of the applicant’s registration with a comparable body, where applicable,
 - (ii) a certificate of incorporation, if the applicant is a legal person,
 - (iii) a business plan, including financial and operational projections, setting out the nature and scale of the virtual asset business activities proposed to be carried out, technological requirements and where applicable, staffing requirements,
 - (iv) particulars of the applicant’s arrangements for the management of the virtual asset business,
 - (v) policies and measures to be adopted by the applicant to meet the obligations under this Act and the Financial Intelligence Act,
 - (vi) particulars and information relating to customer due diligence of each organiser, issuer, founder, investor, beneficial owner, security holder, director and officer of the virtual asset business, and
 - (vii) such fee as may be prescribed.

Cap. 46:04

(3) A bank licensed under the Banking Act may, with the approval of the Central Bank, make an application to the Regulatory Authority for a licence to carry out a virtual asset business.

(4) The Regulatory Authority may require an applicant to provide such additional information and documents as are reasonably necessary, upon giving the applicant 14 days' written notice.

(5) An applicant may withdraw an application by giving seven days' written notice to the Regulatory Authority at any time before the determination of the application.

11. (1) The Regulatory Authority may, on application made under section 10, issue a licence where — Issue of licence

- (a) in the case of a natural person, the applicant is —
 - (i) a fit proper person, and
 - (ii) resident in Botswana;
- (b) in the case of a legal person, the applicant, its beneficial owners, their associates and officers are fit and proper persons to carry out virtual asset business activities for which the licence is sought; and
- (c) the applicant has adequate resources, infrastructure, staff with the appropriate competence, experience and proficiency to carry out the business activities of a virtual asset service provider or issuer of initial token offerings.

(2) The Regulatory Authority shall, in addition to the other relevant requirements under the Financial Intelligence Act or other related enactments, when determining whether a person is fit and proper under subsection (1), have regard to the —

- (a) financial status or solvency of the person;
- (b) education or other qualifications and experience of the person, taking into account the nature of the role or functions that the person will perform;
- (c) ability of the person to carry on the virtual asset business competently, honestly and fairly;
- (d) ability of the person to ensure a satisfactory standard of governance and operational conduct; and
- (e) reputation and character —
 - (i) where the person is a natural person, of the natural person, or
 - (ii) where the person is a legal person, of the legal person, its directors, shareholders, senior management or any other officer.

(3) The Regulatory Authority may, in addition to subsection (2), take into account —

- (a) the virtual asset business activities proposed to be carried out by the applicant;
- (b) the capacity of the applicant to carry out the business activities;
- (c) any international standard relating to a virtual asset business;
- (d) any information obtained from a competent authority or comparable body; and
- (e) whether the granting of a licence to the applicant may pose a risk to purchasers, investors or the public.

(4) The Regulatory Authority may grant an applicant a licence in such form and manner as may be prescribed, and upon payment of a prescribed fee.

Request to
cease virtual
asset business

12. (1) A licence holder may, in such form and manner as may be prescribed, make a request to cease activities or operations as a virtual asset service provider or issuer of initial token offerings.

(2) A licence holder under subsection (1) shall, within seven days of submitting the request, submit a written plan to the Regulatory Authority setting out the steps the licence holder will follow to cease the virtual asset business.

(3) The plan in subsection (2) shall state –

- (a) the full names and physical address of the person who will manage the licence holder’s cessation of the virtual asset business;
- (b) the period required to cease the business operations;
- (c) the manner in which customer files or accounts will be closed and secured;
- (d) customer notification procedures;
- (e) customer transfer procedures, if applicable.

(4) The Regulatory Authority shall, upon receipt of the plan under subsection (2), supervise and monitor the execution of the plan.

(5) The Regulatory Authority may, in the public interest and for purposes of this section, give directions to the licence holder and the licence holder shall comply with such directions.

Suspension or
revocation
of licence

13. The Regulatory Authority may, at any time, suspend or revoke a licence, where –

- (a) the Regulatory Authority considers that the licence holder is not a fit and proper person to provide a virtual asset service or issue initial token offering in terms of this Act;
- (b) the Regulatory Authority considers that the licence holder does not fulfil the requirements of, or has contravened, any of the provisions of this Act, or has failed to satisfy or comply with any obligation or condition to which the licence is subject to;
- (c) the Regulatory Authority is furnished, by or on behalf of the licence holder, with information which is false, inaccurate or misleading;
- (d) the licence holder has obtained the licence by making false statements or by any other irregular means;
- (e) the licence holder has not commenced the virtual asset business that the licence holder is authorised to provide within 12 months, from the date of issue of the licence, or has ceased to provide the virtual asset service;
- (f) the Regulatory Authority considers it desirable to suspend or revoke the licence for the protection of customers and the public;
- (g) a licence holder makes a request for the suspension or revocation of the licence; or
- (h) a competent authority or comparable body makes a request for the suspension or revocation of the licence:

Provided that upon receipt of the written request, the Regulatory Authority may conduct its own investigation in terms of sections 6 and 7.

- 14.** (1) Where the Regulatory Authority makes a decision to —
- (a) vary any condition to which the licence is subject or to impose a condition thereon; or
 - (b) suspend or revoke a licence,
- the Regulatory Authority shall give the licence holder 21 days' written notice of its intention to do so, setting out the reasons for the decision it proposes to take.
- (2) A licence holder may, within 14 days after receipt of the notice given under subsection (1), make written representations to the Regulatory Authority, stating reasons why the proposed decision should not be taken, and the Regulatory Authority shall consider any representation so made before arriving at a final decision.
- (3) The Regulatory Authority may, where it is satisfied that the licence holder fulfills the requirements of this Act, lift the suspension on such conditions as it may consider necessary, including varying any condition to which the licence is subject or imposing further conditions thereon.
- 15.** (1) Notwithstanding section 14, the Regulatory Authority may —
- (a) suspend a licence, without notice, where the Regulatory Authority considers that an immediate suspension is necessary to protect the public;
 - (b) revoke a licence, without suspension, where the licence holder has made a request for the revocation; or
 - (c) immediately revoke a licence, without suspension, where the Regulatory Authority considers it necessary to do so in the public interest for purposes of section 13 (a) to (d), (f) and (h).
- (2) The Regulatory Authority shall, as soon as is practicable, notify a licence holder of its decision, in writing.
- 16.** Where the Regulatory Authority revokes a licence in terms of section 15 (1)(c), the Regulatory Authority —
- (a) shall, as may be necessary for purposes of the Financial Intelligence Act, notify comparable bodies and competent authorities of the revocation;
 - (b) shall, by notice in *Gazette*, notify the public of the revocation; and
 - (c) may make a written request to a competent authority for immediate deregistration, dissolution or winding up of the licence holder.
- 17.** (1) A licence holder who wishes to assign or transfer —
- (a) a licence issued under section 11; or
 - (b) beneficial ownership in a virtual asset business,
- shall, in such form and manner as may be prescribed, and on payment of a prescribed fee, make an application to the Regulatory Authority for the assignment or transfer of the licence or beneficial ownership.
- (2) An assignment or transfer made by a licence holder in contravention of subsection (1), shall be null and void and constitute sufficient grounds for the Regulatory Authority to revoke the licence.

Notice of
intention to
suspend or
revoke licence

Suspension or
revocation of
licence without
notice

Notification of
revocation,
winding up etc.

Assignment
and transfer
of licence or
beneficial
ownership

Information on assignment and transfer of licence or beneficial ownership

18. (1) Where the Regulatory Authority, pursuant to an application made under section 17, grant approval of the assignment or transfer of a licence or beneficial ownership —

- (a) the founder shall obtain and hold the required and accurate information on the transfer, including the required and accurate information on beneficial owners;
- (b) the founder shall submit the required and accurate information obtained and held pursuant to paragraph (a) to a beneficial owner, other than a financial institution, immediately and securely; and
- (c) the beneficial owner shall obtain and hold the required and accurate information on the assignment or transfer.

(2) A founder and beneficial owner shall record the information to be obtained and held pursuant to subsection (1) in such form and manner as may be prescribed and make it readily available to the Regulatory Authority and to a competent authority or comparable body upon request.

(3) The founder and beneficial owner shall, before executing the transfer of the licence or beneficial ownership, ensure that the founder has risk-based policies and procedures in place for the purposes of determining whether the information required to effect the transfer —

- (a) is complete; or
- (b) is consistent with the virtual asset service provider or issuer of initial token offerings' own records.

Register of virtual asset service providers and issuers of virtual token offerings

19. (1) The Regulatory Authority shall establish and maintain, in such form and manner as may be prescribed, a register of persons licensed under this Part to carry on a virtual asset business.

(2) Without limiting the generality of subsection (1), the register shall state —

- (a) the full names and physical address of the licence holder, including the address of the virtual asset business, if different;
- (b) the licence, in respect of the virtual asset business, held by a licence holder, including any licence issued, or registration, by a comparable body with respect to the virtual asset business;
- (c) virtual asset services provided by the licence holder;
- (d) name and physical address of every organiser, issuer, founder, investor, beneficial owner, security holder, director and officer of the virtual asset business;
- (e) any conditions imposed by the Regulatory Authority on the virtual asset business or licence; and
- (f) any other information as the Regulatory Authority may consider necessary.

(3) The register kept in terms of subsection (1) shall be open for inspection to any member of the public upon payment of a prescribed fee.

(4) A licence holder to which an entry in the register relates, shall as soon as practicable after the licence holder becomes aware of any error in the entry or any change in circumstances that is likely to have a bearing on the accuracy of the entry, give notice in writing to the Regulatory Authority of the error or change in circumstances, as the case may be.

PART IV – *Obligations of Licence Holders*

20. (1) A licence holder that has custody of one or more virtual assets for a customer shall —

Custody and protection of customer assets

- (a) maintain, in its custody, a sufficient amount of each type of virtual asset in order to meet the licence holder's obligations to the customer; and
 - (b) meet all financial requirements, as may be prescribed.
- (2) The virtual asset referred to in subsection (1) shall —
- (a) be held by the licence holder for the customer entitled to the virtual asset;
 - (b) not be the property or virtual asset of the licence holder; and
 - (c) not be subject to the claims of creditors of the licence holder.

21. A licence holder shall establish systems and controls in the virtual asset business that are adequate and appropriate for the scale and nature of the business activities, including systems and controls which adequately and appropriately address the —

Prevention of market abuse

- (a) recording, storing, protection and transmission of information;
- (b) effecting and monitoring of transactions;
- (c) operation of the measures taken for securing the timely discharge, whether by performance, compromise or otherwise, of the rights and liabilities of the parties to the transaction;
- (d) safeguarding and administration of virtual assets belonging to customers; and
- (e) business continuity and planning, in the event of a disruption of a virtual asset service.

22. (1) A person who desires to directly or indirectly acquire a beneficial interest in a licence holder shall make an application, to the Regulatory Authority in such form and manner as may be prescribed and upon payment of a prescribed fee, for the acquisition of such interest.

Acquisition of beneficial interest in licence holder

(2) An application made in terms of subsection (1) shall include sufficient information to enable the Regulatory Authority to consider the proposed acquisition in relation to —

- (a) the nature of the proposed acquisition;
 - (b) who the proposed beneficial owner is and any person who has control or management of the beneficial owner; and
 - (c) how the proposed acquisition is to be financed.
- (3) In assessing a proposed acquisition, the Regulatory Authority shall have regard to —
- (a) the likely influence of the proposed beneficial owner on the licence holder;
 - (b) the suitability of the proposed beneficial owner and the financial soundness of the proposed acquisition; and
 - (c) whether there are reasonable grounds to suspect that the acquisition is a suspicious transaction.

A.60

- (4) The Regulatory Authority may, where it grants or refuses to grant approval on the proposal to acquire a beneficial interest in a licence holder, inform the proposed beneficial owner, in writing, and shall give reasons for the grant or refusal of the approval.
- (5) For the purposes of this sub section (3), “suspicious transaction” has the meaning assigned to under the Financial Intelligence Act.
- Offer of virtual assets
- 23.** (1) A licence holder who offers a virtual asset shall provide, in the offer –
- (a) information that is accurate and not misleading;
 - (b) information that is consistent with the information contained in the whitepaper published in terms of section 24, or with the information required to be in the whitepaper;
 - (c) a statement that a whitepaper has been or will be published in terms of section 24 and the addresses and times at which copies of the whitepaper are or will be available to the public; and
 - (d) information concerning the initial token offering or the admission to trading on a virtual asset exchange which shall be consistent with the information contained in the whitepaper.
- (2) For purposes of subsection (1), “information” shall include the name of any person endorsing the licence holder’s whitepaper.
- Issuance of white paper
- 24.** (1) A licence holder shall, in its white paper, provide full and accurate disclosure of information which would allow potential purchasers to make an informed decision.
- (2) A licence holder shall publish its white paper by –
- (a) posting a copy on a website operated and maintained by it, or by a third party for and on its behalf, which shall be readily accessible to, and downloadable by, potential purchasers for the duration of the offer period and for not less than 14 days after the offer period ends; or
 - (b) publishing it in a newspaper circulating in Botswana or the *Gazette*.
- (3) The white paper required to be published pursuant to subsection (2) shall be signed by every member of the governing body of the licence holder.
- (4) The Regulatory Authority may order a licence holder to amend its white paper to include supplementary information.
- (5) A licence holder shall, after it has published a white paper and becomes aware of any information which could affect the interests of purchasers before the close of the offer period, within seven days, give written notice to the Regulatory Authority and disclose that information by a supplement to the white paper.
- (6) A licence holder who fails to comply with subsection (5) commits an offence and is liable to a fine not exceeding P300 000 and to imprisonment for a term not exceeding two years, or to both.
- Classification of virtual assets
- 25.** (1) A licence holder shall identify the class or classes of virtual assets which are available for subscription in its white paper.
- (2) A licence holder shall make an application to the Regulatory Authority in such form and manner as may be prescribed and upon payment of a prescribed fee, to change the class or classes of virtual assets to be offered by the licence holder.

(3) Where, pursuant to subsection (2), the Regulatory Authority approves a change of class or classes of virtual assets, the licence holder shall amend and publish its white paper in accordance with section 24.

PART V – Professional Conduct and Compliance of Licence Holders

- 26.** A licence holder shall, in carrying out a virtual asset business —
- (a) act honestly and fairly;
 - (b) act with due care, skill and diligence;
 - (c) observe and maintain a high standard of professional conduct;
 - (d) ensure that appropriate measures are put into place for the protection of customer’s virtual assets; and
 - (e) have effective corporate governance arrangements consistent with this Act.
- 27.** A licence holder shall implement and maintain measures for preserving the confidentiality of information of customers.
- 28.** (1) A licence holder shall implement and maintain —
- (a) record keeping measures for the accurate collection of information and documents related to the originator, founder and beneficial owner of a virtual asset business; and
 - (b) in relation to the protection of personal data relative to the customer, data protection measures consistent with the Data Protection Act and as may be prescribed.
- 29.** (1) A licence holder shall, every year not later than three months after the close of its financial year, file with the Regulatory Authority an audited financial statement, in respect of all transactions related to the licence holder’s virtual asset business activities.
- (2) For the purposes of this section, “financial year” means in respect of —
- (a) the licence holder’s first financial year, a period not exceeding 18 months from the date of incorporation or issue of a licence; and
 - (b) every subsequent financial year, a period not exceeding 12 months.
- 30.** (1) A licence holder may make an application to the Regulatory Authority, in such form and manner as may be prescribed, to —
- (a) modify the scope of the virtual asset business activities;
 - (b) re-organise its legal structure;
 - (c) merge with another entity; or
 - (d) change its name.
- (2) A licence holder shall not, without the approval of the Regulatory Authority —
- (a) expand the scope of its activities;
 - (b) issue new tokens;
 - (c) merge with another entity;
 - (d) appoint a new director or partner;
 - (e) add or reduce its shareholders; or
 - (f) change or modify its name.

Professional
conduct of
licence holder

Confidentiality
of customer
information

Data protection

Audited
financial
statements

Material
change to
business
activities

PART VI – *General Provisions*General offences
and penalties

31. (1) A person who carries out a virtual asset business in contravention of this Act commits an offence and is liable, where no specific penalty is provided, to a fine not exceeding P250 000, or imprisonment for a term not exceeding five years, or to both.

(2) A person who –

- (a) wilfully makes any misrepresentation in any document required to be submitted under this Act;
- (b) wilfully makes any statement or gives any information required for the purpose of this Act which the person knows to be materially false or misleading; or
- (c) knowingly fails to disclose any fact or information required to be disclosed for the purposes of this Act,

commits an offence and is liable to a fine not exceeding P100 000, or to imprisonment for a term not exceeding two years, or to both.

(3) A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, information stored on a computer or other device or other thing that the person knows or ought reasonably to know is relevant to the Regulatory Authority, commits an offence and is liable to a fine not exceeding P1000 000 or to imprisonment for a term not exceeding eight years, or to both.

(4) Where an offence has been committed under this Act and it is proved that the offence occurred with the consent, knowledge, connivance or gross negligence of a director or senior management official of the licence holder, or any person purporting to act in any such capacity, each such person commits offence and is liable to same penalty as provided for under relevant section under this Act.

Onus of proof

32. If in any charge under this Act it is alleged that an offence is committed –

- (a) evidence that an offence under this Act has been committed shall be sufficient proof that such an offence was committed with the knowledge of the person charged; and
- (b) the burden of proving any fact which would be a defence to a charge for contravening any provision of this Act shall lie upon the person charged or accused person.

Administrative
sanctions

33. (1) Notwithstanding any other action which may be taken by the Regulatory Authority for contravention of this Act, the Regulatory Authority may, in addition to such action, impose an administrative penalty for the contravention, including –

- (a) issuing an order of restitution;
- (b) an order for disgorgement of profits or unjust enrichment;
- (c) an application to the Tribunal established under Non-Bank Financial Institutions Regulatory Authority for an order to take such action as may be necessary to protect customers;

- (d) payment of an administrative penalty as may be prescribed; or
- (e) an order imposing any other penalty or sanction as the circumstances of the case may require.

(2) An order made under subsection (1) shall have the same force and effect as an order of the High Court and be enforceable in like manner.

34. A person who is aggrieved by the decision of the Regulatory Authority made in accordance with the provisions of this Act, may appeal such decision to the Tribunal established under the Non-Bank Financial Institutions Regulatory Authority Act.

Appeals against
decisions of
Regulatory
Authority

35. Where, on the commencement of this Act, a person is carrying on a virtual asset business, the person shall make an application in such a manner as may be prescribed, not later than three months after the commencement of this Act, to be licensed as a virtual asset service provider or issuer of initial token offerings.

Transitional
provisions

36. (1) The Minister may make regulations providing for any matter 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 the provisions of this Act.

Regulations

(2) Without limiting the generality of subsection (1), the regulations may provide for any of the following matters –

- (a) the setting up advisory bodies under section 4;
- (b) the form and manner of the information to be submitted to the Regulatory Authority under section 5;
- (c) the form and manner for applying for a licence in terms of section 10;
- (d) the form and manner for the issue of a licence under section 11;
- (e) the form and manner for the application for a transfer or assignment of a licence or beneficial ownership under section 17;
- (f) the recording of information on assignment and transfer of licence or beneficial ownership under section 18;
- (g) the form and manner a register under section 19 shall be established and maintained;
- (h) the form and manner for the acquisition of beneficial interest under section 22;
- (i) the form and manner for an application to change the class of virtual assets under section 25;
- (j) the payment of fees in respect of any matter in this Act; or
- (k) any matter required to be provided for in relation to the Regulatory Authority.

A.64

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

TRUST PROPERTY CONTROL ACT, 2022

No. 4



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Documents deemed to be trust instruments
4. Registration of trusts, trustees and trust service providers
5. Lodgement of trust instruments
6. Notification of address
7. Authorisation of trustee and security
8. Appointment of trustee and co-trustee by Master
9. Foreign trustees
10. Care, diligence and skill required of trustee
11. Trust account
12. Registration and identification of trust property
13. Separate position of trust property
14. Power of court to vary trust provisions
15. Variation of trust instrument
16. Report of irregularities
17. Keeping of records
18. Master's call upon trustee to account
19. Master's requests for information
20. Custody of documents
21. Copies of documents
22. Failure by trustee to account or perform duties
23. Removal of trustee
24. Resignation by trustee
25. Death of trustee
26. Remuneration of trustee
27. Access to court
28. Validation of trust instrument
29. Establishment of Fund
30. Offences and penalties
31. Regulations
32. Repeal of Cap. 31:05
33. Savings

An Act to regulate the control of trusts; and to provide for matters connected therewith.

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

| | |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Short title | 1. This Act may be cited as the Trust Property Control Act, 2022. |
| Interpretation | 2. In this Act, unless the context otherwise indicates — |
| Cap. 46:04 | “bank” means a Bank licensed in terms of the Banking Act; |
| Cap. 08:07 | “beneficial owner” has the same meaning assigned to it under the Financial Intelligence Act; |
| Cap. 42:03 | “beneficiary” means a person entitled to any benefit from the trust and may include the settlor or trustee in the concerned trust; |
| Cap. 42:03 | “building society” means a building society registered in terms of the Building Societies Act; |
| Cap. 42:03 | “foreign trust” means a trust created or governed by foreign law which seeks to administer and or dispose trust property located in Botswana; |
| Cap. 08:03 | “foreign trustee” means a person who is a non-resident, appointed as a trustee by or in accordance with the trust instrument of a foreign trust where such person administers or disposes trust property located in Botswana; |
| Cap. 08:03 | “financial institution” includes a bank, building society or a non-bank financial institution; |
| Cap. 08:03 | “funds” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act; |
| Cap. 31:01 | “Master” in relation to this Act means the Master of the High Court and includes the Deputy Master, Senior Assistant Master and Assistant Master appointed under Part II of the Administration of Estates Act”; |
| Cap. 46:08 | “non-bank financial institution” means a non-bank financial institution licensed in terms of the Non-Bank Financial Institutions Regulatory Authority Act; |
| Cap. 46:08 | “non-profit trust” means a trust that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal, or for the carrying out of other types of work including, but not limited to — |
| | (a) the prevention or relief of poverty; |
| | (b) the advancement of education; |
| | (c) the advancement of religion; |
| | (d) the advancement of health or the saving of lives; |
| | (e) the advancement of citizenship or community development; |
| | (f) the advancement of arts, culture, heritage or science; |
| | (g) the advancement of sport; |

- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the Republic or of the efficiency of the police, fire and rescue services or ambulance services; or
- (m) any other purpose that may reasonably be regarded as similar to, or within the spirit of the above mentioned purposes;

“notarial deed” means a deed registered in terms of the Deeds Registry Act;

Cap. 33:02

“protector” means any person to whom powers or interests ordinarily exercised by trustees have been vested in him or her, whether it be the settlor or any other person, including the power to —

- (a) direct a trustee to dispose of, advance, lend, invest, pay or apply trust property;
- (b) vary or terminate a trust;
- (c) add or remove a person as a beneficiary;
- (d) appoint or remove trustees or give another individual control over a trust; or
- (e) direct, withhold consent to or veto the exercise of powers —
 - (i) mentioned in paragraphs (a) to (d) or,
 - (ii) by a trustee;

“register” means the register of trusts, trustees, and trust service providers established and maintained under section 4;

“settlor” means a person who makes or arranges for the making of a trust instrument under which the person’s ownership in property is made over or bequeathed to other specified persons and “founder” shall have the same meaning;

“trust” includes a trust, non-profit trust, a foundation or any other arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed —

- (a) to another person, the trustee, in whole or in part, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument; or
- (b) to the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument, but does not include the case where the property of another is to be administered by any person as a trustee, executor, tutor or curator in terms of the provisions of any other written law;

“trustee” means any person, including the founder or settlor of a trust who acts as trustee by virtue of an authorisation under section 7 and includes any person whose appointment as trustee is already in force at the commencement of the Act;

“trust instrument” means a written agreement, testamentary writing, court order or a notarial deed according to which a trust is created;

“trust property” has the same meaning assigned to “property” under the Proceeds and Instruments of Crime Act; and

“trust service provider” means a person, other than a person or business listed under Schedule I of the Financial Intelligence Act, that as part of his or her business, provide any of the following services to a third party —

- (a) acting as a formation agent for trusts;
- (b) providing a registered office, business address or accommodation, correspondence or administrative address for a trust; or
- (c) acting as, or arranging for another person to act as a trustee of an express trust.

Documents deemed to be trust instruments

3. If a document represents the reduction to writing of an oral agreement by which a trust was created or varied, such document shall for the purposes of this Act be deemed to be a trust instrument.

Registration of trusts, trustees and trust service providers

4. (1) Subject to the provisions of this Act, the Master shall register trusts, trustees and trust service providers.

(2) The Master shall establish and maintain a register for trusts, trustees and trust service provider.

(3) The register for trusts, trustees and trust service provider shall be kept at the office of the Master.

(4) Any person may request to inspect the register during office hours upon payment of such fees as may be prescribed.

(5) The Master shall —

- (a) keep the register in such form as may be prescribed;
- (b) remove from the register any trust which is terminated by the court under section 14; and
- (c) remove from the register, the name of a trustee who dies, resigns from office or is removed from office; and
- (d) remove from the register, a trust service provider whose registration has lapsed or has been cancelled.

(6) A person shall not operate as a trust service provider without registering with the Master.

(7) A person who contravenes subsection (6) commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years, or to both.

(8) The Master may impose administrative penalties of an amount not exceeding that specified in subsection (7) where a person contravenes subsection (6).

5. (1) Except where the Master is already in possession of the trust instrument in question or an amendment thereof, a trustee whose appointment comes into force after the commencement of this Act shall —

- (a) before he or she assumes control of the trust property; and
- (b) upon payment of a prescribed fee,

lodge with the Master the trust instrument in terms of which the trust property is to be administered or disposed of by him or her, or a copy thereof certified as a true copy by a notary or other person approved by the Master.

(2) A trust instrument lodged with the Master shall —

- (a) identify the trust property bequeathed and the beneficial owner of the trust including the beneficiary, settlor, founding trustees, the protector, if any, and any other natural person exercising ultimate effective control over the trust;
- (b) indicate whether the trustee shall provide security or is exempted thereof; and
- (c) in the case of a sub-trust of a foreign trust created to administer trust property situated in Botswana, contain an addendum of the trust instrument used to create the foreign trust.

(3) For purposes of identifying a beneficiary, a trustee shall ensure that the trust instrument identifies a beneficiary by —

- (a) names;
- (b) physical address;
- (c) postal address; and
- (d) identification number or, in the case of a non-citizen, a passport number.

(4) Notwithstanding subsection (3), a trustee may identify a beneficiary by reference to —

- (a) class;
- (b) a relationship to another person, whether or not such person is alive at the time of the creation of a trust; or
- (c) members of a class that is to be determined under the terms of the trust.

(5) Where a trust instrument which has been lodged with the Master is varied, the trustee shall lodge the amendment or a copy thereof so certified with the Master.

6. A person whose appointment as trustee comes into effect after the commencement of this Act shall —

- (a) furnish the Master with an address for the service upon him or her of notices and process;
- (b) furnish the Master with an address for where records required under this Act are kept; and
- (c) in case of change of address, within 14 days notify the Master by registered post of the new address.

Lodgement
of trust
instruments

Notification of
address

A.70

Authorisation
of trustee and
security

7. (1) A person whose appointment as trustee in terms of a trust instrument, section 8 or a court order, comes into force after the commencement of this Act, shall act in that capacity only if authorised thereto in writing by the Master.

(2) The Master shall not grant authority to the trustee in terms of this section unless the trustee has —

- (a) furnished security to the satisfaction of the Master for the due and faithful performance of his or her duties as trustee; or
- (b) been exempted from furnishing security by a court order or by the Master under subsection (4) (a) or, subject to the provisions of subsection (4) (d), in terms of a trust instrument:

Provided that where the furnishing of security is required, the Master may, pending the furnishing of security, authorise the trustee in writing to perform specified acts with regard to the trust property; and

- (c) provided the following details —
 - (i) full name, nationality, age, gender and residential address of the individual(s) who are beneficial owners; and
 - (ii) the relationship of the trustee to the beneficial owners.

(3) The Master may, if in his or her opinion there are sound reasons to do so —

- (a) whether or not security is required by the trust instrument, dispense with security by a trustee;
- (b) reduce or cancel any security furnished;
- (c) order a trustee to furnish additional security; or
- (d) order a trustee who has been exempted from furnishing security in terms of a trust instrument to furnish security.

(4) If any authorisation is given in terms of this section to a trustee which is a corporation, such authorisation shall, subject to the provisions of the trust instrument, be given in the name of a nominee of the corporation for whose actions as trustee the corporation is legally liable, and any substitution for such nominee of some other person shall be endorsed on the said authorisation.

Appointment
of trustee
and co-trustee
by Master

8. (1) If the office of trustee cannot be filled or becomes vacant, the Master shall, in the absence of any provision in the trust instrument, after consultation with interested parties as he or she may deem necessary, appoint any person as trustee.

(2) When the Master considers it desirable, he or she may, notwithstanding the provisions of the trust instrument, appoint as co-trustee any serving trustee or any other person he or she deems fit.

Foreign
trustees

9. Where a foreign trustee has to administer or dispose of trust property in Botswana, the provisions of this Act shall apply to such trustee in respect of such trust property and the Master may authorise such trustee under section 7 to act as trustee in respect of that property:

Provided that the foreign trustee —

- (i) shall create a sub-trust to be registered in Botswana in accordance with section 4 and any other provision of this Act;

- (ii) appoint a resident trustee to co-administer and dispose of the trust property that is located in Botswana; and
- (iii) provides security in accordance with the provisions of this Act.

10. (1) A trustee shall in the performance of his or her duties and the exercise of his or her powers act with the care, diligence and skill which can reasonably be expected of a person who manages the affairs of another.

Care, diligence and skill required of trustee

(2) Notwithstanding the generality of subsection (1), a trustee shall —

- (a) know the terms of the trust;
- (b) act in accordance with the terms of the trust;
- (c) act honestly and in good faith;
- (d) hold or deal with trust property and act for the benefit of the beneficiaries or to further the permitted purpose of the trust;
- (e) exercise the trustee's powers for a proper purpose;
- (f) not exercise a power of a trustee directly or indirectly for the trustee's own benefit;
- (g) consider regularly whether he or she should be exercising any of the powers conferred on him or her in relation to the trust;
- (h) avoid a conflict between his or her interests and the interests of any of the beneficiaries of the trust;
- (i) treat all beneficiaries in line with the terms of the trust;
- (j) not make a profit from the trusteeship; and
- (k) not take a reward any reward for acting as a trustee except under the trustee's legitimate expenses and disbursements due and payable to the trustee under section 26.

(3) Any provision contained in a trust instrument shall be void in so far as it would have the effect of exempting a trustee from or indemnifying him or her against liability for breach of trust where he or she fails to show the degree of care, diligence and skill as required in subsection (1).

11. Whenever a person receives money in his or her capacity as trustee, he or she shall deposit such money in a separate trust account at a bank or building society.

Trust account

12. (1) Subject to the provisions of the Banking Act, Building Societies Act, Non-Bank Financial Institutions Regulatory Act, section 56 of the Administration of Estates Act, and the provisions of the trust instrument concerned, a trustee shall —

Registration and identification of trust property

- (a) indicate clearly in his or her bookkeeping the trust property which he or she holds in his or her capacity as trustee;
- (b) if applicable, register trust property or keep it registered in such manner as to make it clear from the registration that it is the trust property;
- (c) make any account or investment at a financial institution identifiable as a trust account or trust investment; and
- (d) in the case of the trust property other than property referred to in paragraphs (b) and (c), make such property identifiable as the trust property in the best possible manner.

(2) In so far as the registration or identification of trust property being administered by a trustee at the commencement of this Act does not comply with the requirements of subsection (1), the trustee shall within a period of 12 months after the said commencement take such steps or cause such steps to be taken as may be necessary to bring the registration or identification of such trust property into conformity with the said requirements.

(3) Upon application in terms of subsection (2) to bring the registration of trust property into line with the provisions of subsection (1), the officer in charge of a deeds registry where such trust property is registered, shall free of charge take such steps as may be necessary to effect the required registration.

Separate position of trust property

13. The trust property shall not form part of the personal estate of the trustee except in so far as he or she as the trust beneficiary is entitled to the trust property.

Power of court to vary trust provisions

14. If a trust instrument contains any provision which brings about consequences which in the opinion of the court the founder of a trust did not contemplate or foresee and which —

- (a) hampers the achievement of the objects of the founder;
- (b) prejudices the interests of beneficiaries; or
- (c) is in conflict with the public interest,

the court may, on application by the trustee or any person who in the opinion of the court has a sufficient interest in the trust property, delete or vary any such provision or make in respect thereof any order which the court deems just, including an order whereby particular trust property is substituted for particular other property, or an order terminating the trust.

Variation of trust instrument

15. Whenever a trust beneficiary under tutorship or curatorship becomes entitled to a benefit in terms of a trust instrument, the tutor or curator of such a beneficiary may on behalf of the beneficiary agree to the amendment of the provisions of a trust instrument, provided such amendment is to the benefit of the beneficiary.

Report of irregularities

16. (1) If an irregularity in connection with the administration of a trust comes to the notice of a person who audits the accounts of a trust the person shall, if in his or her opinion it is a material irregularity, report it in writing to the trustee, and if such irregularity is not rectified to the satisfaction of such person within one month from the date upon which it was reported to the trustee, that person shall report it in writing to the Master.

(2) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P20 000, or to imprisonment for a term not exceeding two years, or to both.

Keeping of records

17. (1) Every trustee shall keep accurate and up to date information and record of —

- (a) the founder and the founder's identity documents;
- (b) all transactions and any matter relating to —

- (i) the trust,
 - (ii) specified acts performed by the trustee as a result of an authorisation under section 7 including details of the authorisation where it is given by a nominee of a corporation,
 - (iii) trust property including the registration and identification details of the trust property required under section 12 (1), and
 - (iv) trust accounts including trust investments as required under section 12 (1) (c);
 - (c) beneficiaries and the beneficiaries' identity documents;
 - (d) any business relationship with any financial institution and the nature of that relationship;
 - (e) all trustees including co-trustees appointed under section 8 and if relevant, any former trustees and their relationship with beneficiaries;
 - (f) any variation or deletion of a provision of a trust instrument by the court under section 14 and details of the effect on trust property;
 - (g) any variation of a trust instrument under section 15;
 - (h) any reports of irregularities and how the trustee dealt with those irregularities; and
 - (i) all expenses and disbursements paid to the trustee under section 26.
- (2) The Minister may make regulations relating to the information and records required to be kept under subsection (1).
- (3) Regulations made under subsection (2) shall specify —
- (a) the period that the information and records referred to in this section must be kept;
 - (b) the form in which the information and records shall be submitted to the Master; and
 - (c) the intervals at which the information and records shall be submitted to the Master.

18. (1) A trustee shall, at a written request of the Master, account to the Master's satisfaction and in accordance with the Master's requirements for the trustee's administration and disposal of trust property and shall, at the written request of the Master, deliver to the Master any book, record, audited account or document relating to the trustee's administration or disposal of the trust property and shall to the best of his or her ability answer honestly and truthfully any question put to him or her by the Master in connection with the administration and disposal of the trust property.

(2) The Master may, if he or she deems it necessary, cause an investigation to be carried out by some fit and proper person appointed by the Master into the trustee's administration and disposal of trust property.

(3) The Master shall make such order as he or she deems fit in connection with the costs of an investigation referred to in subsection (2).

Master's call
upon trustee
to account

Master's requests for information

19. (1) In addition to the written requests referred to under section 18 for the trustee to account for his or her administration and disposal of trust property, the Master may at any time request a trustee to provide information or documents connected with the activities of the trust which the Master considers necessary for the purposes of exercising his or her functions under this Act.

- (2) A request under this section must specify —
- (a) the information or documents required;
 - (b) that the request is made in accordance with this section;
 - (c) the purpose for which the information or documents are required; and
 - (d) the time by which the information or documents are to be provided.

Custody of documents

20. (1) A trustee shall not without the written consent of the Master destroy any document which serves as proof of the investment, safe custody, control, administration, alienation or distribution of trust property before the expiry of a period of 10 years from the termination of a trust.

- (2) A trustee shall keep the following documents —
- (a) the trust instrument and any other document that contains the terms of the trust;
 - (b) any variations made to the documents under paragraph (a);
 - (c) any records of the trust property that identify the assets, liabilities, income and expenses of the trust and that are appropriate to the value and complexity of the trust property;
 - (d) any records of trustee decisions made during the trustee's trusteeship;
 - (e) any written contracts entered into during the trustee's trusteeship;
 - (f) any accounting records and financial statements prepared during the trustee's trusteeship;
 - (g) any documents of appointment or removal including any court orders appointing and removing trustees;
 - (h) any letter or memorandum of wishes from the settlor;
 - (i) any document referred to in paragraphs (a) to (h) kept by a former trustee during his or her trusteeship and passed on to the current trustee; and
 - (j) any other document necessary for the administration of the trust.

Copies of documents

(3) Where there is more than one trustee of a trust, each trustee shall comply with the provisions of subsection (2).

21. Subject to the provisions of section 8 of the Administration of Estates Act, regarding the documents in connection with the estate of a deceased person, the Master shall upon written request and payment of the prescribed fee furnish a certified copy of any document under his control relating to trust property to a trustee, his or her surety or his representative or any other person who in the opinion of the Master has sufficient interest in such document.

22. If a trustee fails to comply with a request by the Master in terms of section 18 or 19 or to perform any duty imposed upon him or her by the trust instrument or by law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with such request or to perform such duty.

Failure by trustee to account or perform duties

23. (1) A trustee may, on the application of the Master or any person having an interest in the trust property, at any time be removed from his or her office by the court if the court is satisfied that such removal will be in the interests of the trust and its beneficiaries.

Removal of trustee

(2) Notwithstanding the provisions of subsection (1), trustees or a protector may remove a trustee in accordance with the terms of the trust instrument.

(3) A trustee may at any time be removed from his or her office by the Master if —

- (a) the trustee has been convicted in Botswana or elsewhere of any offence of which dishonesty is an element or of any other offence for which the trustee has been sentenced to imprisonment without the option of a fine;
- (b) the trustee fails to give security or additional security, as the case may be, to the satisfaction of the Master within two months after having been requested thereto or within such further period as is allowed by the Master;
- (c) the trustee's estate is sequestrated or liquidated or placed under judicial management;
- (d) the trustee has been declared by a competent court to be mentally ill or incapable of managing his own affairs or if he is by virtue of the Mental Disorders Act, detained as a patient in an institution or at the President's pleasure; or
- (e) the trustee fails to perform satisfactorily any duty imposed upon him or her by or under this Act or to comply with any lawful request of the Master.

Cap. 63:02

(3) If a trustee authorised to act under section 7 (1) is removed from his or her office or resigns, he or she shall without delay return his or her written authority to the Master.

24. A trustee may resign by notice in writing to the Master and the ascertained beneficiaries who have legal capacity, or to the tutors or curators of the beneficiaries of the trust under tutorship or curatorship, whether or not the trust instrument provides for the trustee's resignation.

Resignation by trustee

25. (1) Where the function or power of a trustee is vested in two or more trustees jointly and one of those trustees dies, the surviving trustees, if any, may exercise such powers or perform such functions until a new trustee is appointed by the Master in the place of the trustee who died.

Death of trustee

(2) If a sole trustee or the last surviving or continuing trustee dies, the Master shall, in consultation with the beneficiaries of the trust or with anyone who has a vested interest in the trust, determine the person who shall become the replacement trustee of the trust.

A.76

| | |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Remuneration of trustee | <p>26. A trustee shall in respect of the execution of his or her official duties be entitled to such remuneration as provided for in the trust instrument or where no such provision is made, to a reasonable remuneration, which shall in the event of a dispute be fixed by the Master.</p> |
| Access to court | <p>27. Any person who feels aggrieved by an authorisation, appointment or removal of a trustee from the register or by any decision, order or direction of the Master made or issued under this Act, may apply to the court for relief, and the court shall have the power to consider the merits of any such matter, take evidence and make any order it deems fit.</p> |
| Validation of trust instrument | <p>28. (1) Any trust instrument executed before 29th June, 2018, but has not been lodged with the Master shall, subject to the provisions of subsections (2) and (3), be valid.</p> <p>(2) Any trust instrument executed before 29th June, 2018, and has not been lodged with the Master, shall within a period of six months after the commencement of this Act, be lodged with the Master.</p> <p>(3) At the expiry of the period referred to in subsection (2), a trust instrument executed before 29th June, 2018 which is not lodged with the Master shall be null and void.</p> <p>(4) The Master shall take possession and control of trust property of any trust instrument which has been rendered null and void in accordance with subsection (3).</p> <p>(5) The trust property seized by the Master in accordance with subsection (4) shall vest with the state and be kept in a Fund established under this Act.</p> <p>(6) Any person who contravenes the provisions of this section commits an offence and is liable to a fine of not exceeding P20 000 or, to imprisonment for a term not exceeding two months, or to both.</p> <p>(7) The Minister may make subsidiary legislation dealing with further transitional arrangements for —</p> <ul style="list-style-type: none">(a) the lodging and registration of trust instruments executed before 29th June, 2018;(b) the registration of trustees whose appointments as trustees is in terms of trust instruments executed before 29th June, 2018; and(c) imposing any administrative penalties for failure to lodge or register within the stipulated period. |
| Establishment of Fund | <p>29. (1) The Minister shall establish a Fund to be known as the Void Trust Fund to which all moneys and property collected under this Act shall be paid into.</p> <p>(2) In addition to any moneys which may be collected under this Act, any profits derived or investments and sales made by the Master in relation to property seized under section 28 shall be paid into the Fund.</p> |
| Offences and penalties | <p>30. A person commits an offence who —</p> <ul style="list-style-type: none">(a) fails to register a trust in accordance with the provisions of this Act; |

- (b) fails to register as a trustee in accordance with the provisions of this Act; or
 - (c) purports to act as a trustee without the authority of the Master required under section 7.
- (2) A person who commits an offence under subsection (1) is liable to a fine of P20 000, or to a term of imprisonment not exceeding two years, or to both.
- (3) A trustee who —
- (a) fails to comply with an order made under section 22 directing him or her to keep the information and records required to be kept under section 17
 - (b) fails to comply with an order made under section 22 directing him or her to account for his or her administration and disposal of trust property as required under section 17;
 - (c) refuses to provide information or documents to the Master under section 19 when required to do so by an order of the court made in terms of section 20;
 - (d) gives information which is false or misleading; or
 - (e) fails to perform or comply with any requirement under this Act, commits an offence and is liable to a fine not exceeding P20 000, or to imprisonment for a term not exceeding five years, or to both.

31. (1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act.

Regulations

(2) Without derogating from the generality of subsection (1), regulations may provide for —

- (a) the type of information to be provided to the Master at the time of registration of a trust by the trustee, settlor or any other person who has effective control of the trust property;
- (b) the method of making requests for information under section 19 including the methods a trustee may use to give that information; or
- (c) any matter under this Act which requires to be prescribed.

32. (1) The Trust Property Control (hereinafter referred to as “the repealed Act”) is hereby repealed.

Repeal of Cap.
31:05

33. (1) Notwithstanding the repeal effected under section 32, any instrument made under the repealed Act shall continue to have effect, as if made under this Act, to the extent that it is not inconsistent with this Act.

Savings

(2) Any legal proceedings in respect of any offence committed or alleged to be committed under the repealed Act shall be carried out or prosecuted as if commenced under this Act.

(3) Any decision or action taken or purported to have been taken or done by the Master under the provisions of the repealed Act, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been taken or done under the corresponding provisions of this Act.

A.78

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

MOVABLE PROPERTY (SECURITY INTERESTS) ACT, 2022

No. 5



of 2022

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation
3. Application of Act
4. Conflict of laws
5. Party autonomy and standards of conduct

PART II — *Collateral Registry Office and Collateral Registry*

6. Collateral Registry Office
7. Appointment of officers of Collateral Registry Office
8. Functions of Collateral Registry Office
9. Collateral Registry
10. Integrity of information in Registry
11. Public access to Registry records
12. Debtor's authorisation for registration
13. Single notice sufficient for multiple security agreements
14. Procedure for registration, indexing of information, etc.
15. Information required for initial notice
16. Effect of registration
17. Obligation to provide proof of registration
18. Duration of registration of notice
19. Registration of amendment or cancellation notice
20. Compulsory registration of amendment or cancellation notice
21. Error in required information by registrant
22. Change in identification of debtor after registration
23. Post-registration transfer of collateral
24. Evidentiary provisions
25. Fraudulent notice
26. Submission of frivolous or malicious notice

PART III — *Security Interests*

27. Creation of security interests
28. Provisions applicable to collateral
29. Provisions applicable to obligations

30. Security interest in accounts receivable
31. Continuation of security interest after transfer
32. Continuation of security interest in proceeds
33. Extinguishment of security interests
34. Tangible assets commingled in mass or made into product
35. Tangible assets covered by negotiable documents
36. Tangible assets and intellectual property used

PART IV — *Perfection of Security Interests*

37. Primary methods for perfection of security interests
38. Perfection of security interest in proceeds
39. Perfection of security interest in mass or product
40. Perfection of security interest in negotiable documents and related tangible assets
41. Perfection of security interest in consumable goods
42. Perfection of security interest in money
43. Perfection of security interest in deposit accounts
44. Perfection of security interest in agricultural produce
45. Transfer of perfected security interests
46. Lapses in perfection
47. Change in method of perfection of security interest

PART V — *Priority of Security Interests and Third Party Interests*

48. Priority of security interest in same collateral
49. Priority of security interest transferred by debtor
50. Priority of security interest in proceeds
51. Competing security interests in mass or product
52. Priority of security interest in accessions
53. Priority of acquisition security interest in fixtures
54. Competing acquisition security interests
55. Acquisition security interest in proceeds
56. Competing acquisition security interests in mass or product
57. Non-acquisition security interests competing with acquisition security interests
58. Buyers or other transferees, lessees and licensees of collateral
59. Security interests competing with rights of non-consensual creditors
60. Priority of statutory liens
61. Subordination of priority
62. Future advances and future collaterals
63. Knowledge of security interest irrelevant
64. Negotiable instruments and negotiable documents
65. Possession of money subject to security interest
66. Deposit accounts
67. Payment of debt through payment systems
68. Taking possession of securities

PART VI — *Enforcement of Security Interests*

69. Post-default rights
70. Methods of exercising post-default rights
71. Relief for non-compliance
72. Right of redemption
73. Right of higher ranking secured creditor to take over enforcement
74. Right of secured creditor to obtain possession of collateral
75. Secured creditor rendering collateral unusable
76. Right of secured creditor to dispose of collateral
77. Duty of secured creditor disposing of collateral
78. Distribution of proceeds after disposition
79. Proposal to acquire collateral
80. Objection to proposal to acquire collateral
81. Rights acquired in collateral
82. Debtor may reinstate security agreement
83. Direct collection of payment
84. Collection of payment by outright transferee of account receivable

PART VII — *General Provisions*

85. Classification of assets
86. Secured creditor to provide information to debtor
87. Obligations of parties in possession
88. Exemption from liability for actions or omissions
89. General penalties
90. Regulations

An Act to provide for the facilitation of the use of movable property as collateral for credit facilities; for the establishment of the Collateral Registry Office and the Collateral Registry; for a comprehensive registration regime of security interests in movable property; for determination of priority between security interests in movable property; and for matters incidental thereto or connected thereto.

Date of Assent: 25.02.2022

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Movable Property (Security Interests) Act, 2022, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and
commencement

Interpretation

2. In this Act, unless the context otherwise requires —
- “account debtor” means a person who is obligated under an account receivable, and includes a guarantor or other person secondarily liable for payment of the account receivable;
- “acquisition security interest” means —
- (a) a security interest in a tangible asset or intellectual property, which secures an obligation to pay any unpaid portion of the purchase price of the tangible asset or intellectual property, or other credit extended to enable a debtor to acquire a right in such tangible asset or intellectual property to the extent that the credit is used for that purpose;
 - (b) the security interest of a lessor of a tangible asset under a lease for a term of one year or more; or
 - (c) the security interest of a consignor who delivers a tangible asset to a consignee under a commercial consignment, but does not include a sale and lease-back to the seller;
- “agricultural produce” means tangible assets of a debtor engaged in farming, and includes —
- (a) crops or horticulture produce, whether future, growing, or severed from land, and after severance whether subjected to any treatment or manufacture;
 - (b) timber, both standing and growing;
 - (c) livestock, bees and poultry, and the produce and progeny thereof;
 - (d) game farming;
 - (e) aquatic assets produced in aquaculture operations;
 - (f) seeds, fertiliser and manure; and
 - (g) any other agricultural and horticultural produce, whether subjected to any treatment or process of manufacture;
- “amendment notice” means a notice submitted to the Registry in the prescribed form to modify information contained in the related notice;
- “as-extracted collateral” means any —
- (a) minerals or petroleum that are subject to a security interest that is created by a debtor having an interest in the minerals or petroleum before extraction, and that attached to the minerals or petroleum as they are extracted; or
 - (b) payment obligations arising out of a sale, at a mine-head or wellhead, of minerals or petroleum in which the debtor had interest before extraction;
- “cancellation notice” means a notice submitted to the Registry in the prescribed form to cancel the effectiveness of the registration of all related registered notices;
- “collateral” means —
- (a) a movable property that is subject to a security interest; or
 - (b) an account receivable that is subject to an outright transfer by agreement;

- “commercial consignment” means a consignment where —
- (a) a consignor has reserved a security interest in a tangible asset that the consignor has delivered to the consignee for the purpose of sale, lease or other disposition; or
 - (b) both the consignor and the consignee deal in the ordinary course of business in the assets of that description, but does not include an agreement under which assets are delivered to an auctioneer for the purpose of sale;
- “competing claimant” means a creditor of a debtor or other person with a right in the collateral that may be in competition with the right of a secured creditor in the same collateral, including —
- (a) another secured creditor of the debtor that has a security interest in the same collateral;
 - (b) another creditor of the debtor that has a right in the same collateral;
 - (c) the insolvency representative under the Insolvency Act; or
 - (d) a buyer or other transferee, lessee or licensee of the collateral;
- “consumer goods” means goods that are used or acquired for use primarily for personal, domestic or household purposes, but does not include a serial-numbered vehicle;
- “control agreement” means an agreement in writing among a deposit-taking institution, a secured creditor and a debtor, pursuant to which the deposit-taking institution agrees to follow instructions from the secured creditor with respect to the payment of funds credited to the deposit account without the further consent of the debtor;
- “debtor” means a —
- (a) person that creates a security interest to secure its own obligation or that of another person;
 - (b) transferor in an outright transfer of an account receivable; or
 - (c) buyer or other transferee, lessee or licensee of a collateral that acquires its right subject to a security interest;
- “deposit account” means a demand, savings or similar account maintained by a deposit-taking institution;
- “deposit-taking institution” means a financial institution that is authorised to accept deposits under the Banking Act;
- “equipment” means a tangible asset, other than inventory or consumer goods, that is primarily used or intended to be used by a debtor in the operation of its business;
- “finance lease” means a lease of a tangible asset where the —
- (a) lessee automatically becomes the owner of the asset that is the object of the lease;
 - (b) lessee may acquire ownership of the asset by paying no more than a nominal price; or
 - (c) asset has no more than a nominal residual value;

Cap. 42:02

Cap. 46:04

“fixture” means a tangible asset that, despite the fact that it is physically affixed to immovable property, is treated as movable property;

“funds proceeds” means proceeds in the form of money, accounts receivable, negotiable instruments or funds credited to a deposit account;

“Government lien” means a tax or lien issued by the Government of Botswana;

“hire purchase agreement” means any agreement whereby goods are sold subject to the condition that the ownership in such goods shall not pass merely by the transfer of the possession of such goods, and the purchase price is to be paid in instalments, two or more of which are payable after such transfer; and includes any other agreement which has, or agreements which together have, the same import, whatever form such agreement or agreements may take:

Provided that any agreement which, or agreements which together, provide for the letting and hiring of goods —

(a) with the right to purchase such goods only after two or after more than two instalments subsequent to such transfer have been paid in respect of the goods; or

(b) with the right, after two or after more than two instalments subsequent to such transfer have been paid in respect of the goods, to continue or renew from time to time such letting and hiring at a nominal rental, or to continue or renew from time to time the right to be in possession of the goods, without any further payment or against payment of a nominal periodical or other amount,

shall, whether or not the agreement or agreements may at any time be terminated by either party or one of the parties, be deemed, for the purposes of this Act, to be of the said import;

“initial notice” means a notice submitted to the Registry in the prescribed form to perfect the security interest to which the notice relates;

“instalment sale agreement” means any agreement of purchase and sale whereby ownership in the goods sold passes upon delivery, and the purchase price is to be paid in instalments, two or more of which are payable after delivery, and under which the seller would be entitled to the return of the goods sold if the buyer fails to comply with any one or more provisions of the agreement; and includes any other agreement which has, or agreements which together have, the same import, whatever form such agreement or agreements may take;

“intangible asset” includes account receivable, deposit account, securities, negotiable instrument, negotiable document and intellectual property right, in an electronic form;

- “intellectual property” means –
- (a) any copyrights and related rights, as defined in the Copyright and Neighbouring Rights Act; Cap. 68:02
 - (b) a mark, patent and industrial design, as defined in the Industrial Property Act; Cap. 68:03
 - (c) a business name, as defined in the Registration of Business Names Act; or Cap. 42:05
 - (d) any other related right;
- “inventory” means any tangible assets that are held by the debtor for sale or lease in the ordinary course of business, including raw materials or work-in-progress, and includes materials used or consumed in a business;
- “mass” means a tangible asset which results when one tangible asset is so commingled with one or more tangible asset that they have lost their separate identities;
- “money” means bank notes and coins issued by the Bank of Botswana and notes and coins authorised as legal tender by any other country;
- “movable property” means any tangible or intangible asset, other than immovable property;
- “negotiable document” means a document of title, or a receipt such as a bill of lading or warehouse receipt, that embodies a right to delivery of a tangible asset and satisfies the requirement of negotiability under the law governing the document;
- “negotiable instrument” means a bill of exchange, cheque or promissory note;
- “non-consensual creditor” means a creditor that has obtained a right in collateral by operation of any law, including an order of a court or as a result of owed taxes and similar fees;
- “notice” means an initial notice, an amendment notice or a cancellation notice;
- “perfected security interest” means a security interest that has become effective against third parties by registration of a notice, possession of a tangible asset, the execution of a control agreement or temporarily perfected, as provided in this Act;
- “possession”, in relation to a secured creditor, means actual possession or control of tangible collateral by the secured creditor or such secured creditor’s agent;
- “priority” means the right of a person in collateral in preference to the right of a competing claimant;
- “proceeds” means identifiable or traceable movable property received as a result of sale, or other disposition, collection, lease or license of the collateral, revenues, dividends, distributions, insurance proceeds and claims arising from defects in, damage to, or loss of, the collateral or other disposition of the collateral, and includes proceeds derived from the sale, or other disposition, collection, lease or license;

- “registrant” means a person who submits the prescribed Registry notice form to the Collateral Registry Office;
- “registration number” means the unique number assigned to an initial notice by the Registry and permanently associated with that notice and any related notice;
- “Registry” means the Collateral Registry established under section 9;
- “Registry records” means the information in all registered notices stored by the Collateral Registry Office, consisting of all the records that are publicly accessible and the records that have been archived;
- “secured creditor” means a —
- (a) person in whose favour a security interest is created; and
 - (b) transferee under an outright transfer of an account receivable;
- “secured obligation” means an obligation secured by a security interest;
- “security” means a share or other interest in the property or enterprise of a citizen or foreign issuer;
- “security agreement” means an agreement —
- (a) between a debtor and secured creditor that creates or provides for a security interest, regardless of whether the parties have denominated it as a security agreement; and
 - (b) that provides for an outright transfer of an account receivable;
- “security interest” means —
- (a) a property right in movable property that is created by agreement to secure payment or other performance of an obligation, regardless of whether the parties have denominated it as a security interest, and regardless of the type of asset, the status of a debtor or secured creditor or the nature of the secured obligation; and
 - (b) the right of the transferee in an outright transfer of an account receivable;
- “serial number” means the serial number located on the chassis or body frame of a motor vehicle or trailer;
- “serial-numbered vehicle” means a motor vehicle or trailer identifiable by a serial number;
- “tangible asset” means every form of tangible movable property, including money, inventory, equipment, consumer goods, accessions, fixtures, negotiable instruments and negotiable documents in paper form;
- “trust indenture” means any deed or document, however designated, in terms of which a person issues or guarantees, or provides for the issue or guarantee of, a debt obligation secured by a security interest and in which a person is appointed as trustee for the holder of the debt obligation issued, guaranteed or provided for under it;
- “trust receipt” includes an acknowledgement of a debtor in writing, to deal with collateral for the benefit of a secured creditor;

“value” means any consideration that is sufficient to support a simple contract, and includes antecedent debt or liability and a binding commitment to provide future value; and

“working day” means any day other than Saturday, Sunday or any day which is a public holiday under the Public Holidays Act.

Cap. 03:07

Application
of Act

3. (1) Except as otherwise provided in this Act, this Act applies to a security right in a movable property, including —

- (a) every transaction that creates a security interest, without regard to the —
 - (i) form of the transaction,
 - (ii) type of the movable property,
 - (iii) status of the debtor or secured creditor,
 - (iv) person who holds title to the collateral, or
 - (v) nature of the secured obligation;
- (b) the transfer of accounts receivable, even though such transfer may not secure payment or performance of an obligation;
- (c) the lease of a tangible asset for a term of more than one year, even though such lease may not secure payment or performance of an obligation;
- (d) a commercial consignment, even though the arrangement may not secure payment or performance of an obligation;
- (e) a security interest created by judgement of a court in accordance with the Rules of the High Court or by operation of law; and
- (f) a security interest created by a Government lien.

Cap. 04:02
(Sub. Leg.)

(2) Without limiting the generality of subsection (1), this Act applies to —

- (a) a floating or fixed charge;
- (b) a hypothec;
- (c) a hire purchase agreement or instalment sale agreement;
- (d) a conditional sale agreement;
- (e) an agreement with a retention of title provision;
- (f) a finance lease;
- (g) a sale and lease-back;
- (h) a trust indenture and trust receipt; and
- (i) a pledge.

(3) This Act does not apply to —

- (a) the creation or transfer of an interest in immovable property, other than the transfer of a right to payment including a lease of immovable property, or a transfer of rental payment payable under a lease for land;
- (b) the sale of accounts receivable as part of a sale of a business out of which such sale arose, unless the seller remains in control of the business thereafter;
- (c) the transfer of accounts receivable that is made solely to facilitate the collection of the accounts for the transferor;
- (d) an assignment for the general benefit of creditors;

Cap. 71:01

Conflict of laws

- (e) a transfer, assignment or mortgage of an aircraft and aircraft engines as defined in the Civil Aviation Act;
- (f) a transfer, assignment or mortgage of a ship; or
- (g) property not liable to attachment in satisfaction of a judgment debt in a court of competent jurisdiction.

4. (1) The law that applies to the mutual rights and obligations of a secured creditor and debtor arising from a security agreement shall be the law chosen by the secured creditor and debtor, and in the absence of a choice of law, by the law governing the security agreement.

(2) Except as otherwise provided in this section, the law that applies to the creation, perfection and priority of a security interest in —

- (a) a tangible asset shall be the law of the country where the tangible asset is located; and
- (b) an intangible asset shall be the law of the country in which the debtor is located.

(3) The law that applies to the creation, perfection and priority of a security interest in a tangible asset that is of the type ordinarily used in more than one country, shall be the law of the country in which the debtor is located.

(4) The law that applies to any matter relating to the enforcement of a security interest shall be —

- (a) in the case of a tangible asset, the law of the country where the tangible asset is located at the time the relevant enforcement process takes place; and
- (b) in the case of an intangible asset, the law that applies to the priority of a security interest.

(5) For the purposes of this section, a debtor is located —

- (a) in the country in which the debtor has a place of business;
- (b) where the debtor has a place of business in more than one country, in the country in which the central administration of the debtor is exercised; or
- (c) where the debtor does not have a place of business, in the country in which the debtor has habitual residence.

(6) The location of a collateral for creation of a security interest shall be the location of the movable property at the time the security interest was created, and for purposes of perfection and determining of the priority of such security interest, the location of the collateral shall be determined at the time the dispute arises.

(7) Where a security interest in collateral is created and perfected before a change in the location of the collateral or debtor, the location of the collateral or debtor shall be, with respect to perfection and priority, the location prior to the change in location.

(8) Where a security interest is perfected under the law of another country and this Act becomes applicable as a result of a change in the location of the debtor or collateral, the security interest shall remain perfected in accordance with this Act until —

- (a) the time when perfection would have lapsed under the law of the other country; or
 - (b) 10 working days after the change in location, or only where perfection requirements under this Act are satisfied before the expiration of that time period.
- (9) The law that applies to the creation, perfection, priority and enforcement of a security interest in the right to funds credited to a deposit account shall be —
- (a) the law of the country in which a deposit-taking institution which maintains the deposit account has its place of business; or
 - (b) where a deposit-taking institution has a place of business in more than one country, the law of the country in which the office that maintains the account is located.

5. (1) A provision of this Act, except the provisions of sections 4(2) to (9), 5(2), 27, 28 and 87, may be derogated from or varied by agreement:

Party
autonomy
and standards
of conduct

Provided that the agreement does not affect the right or obligation of any person that is not party to the agreement.

(2) A person shall exercise any right, duty or obligation that arises under a security agreement or this Act in good faith and in accordance with reasonable standards of commercial practice.

PART II — *Collateral Registry Office and Collateral Registry*

6. (1) The Minister may, by Order published in the *Gazette*, designate a public body as a Collateral Registry Office which shall be responsible for the day-to-day administration of the Registry and any other related functions.

Collateral
Registry
Office

(2) For purposes of this section, “public body” means any office, organisation, establishment or body created by or under any enactment or under powers conferred by any enactment; or any organisation, trust, company or body where public moneys are used, and includes —

- (a) any Ministry or Department;
- (b) a local authority;
- (c) a land board;
- (d) a statutory body; and
- (e) a company registered under the Companies Act being a company in which the Government or an agency of the Government through holding of shares or otherwise, is in a position to direct the operations of that company.

Cap. 42:01

7. The Collateral Registry Office shall, as the Minister may prescribe, appoint a person to be an officer, who shall exercise and perform the functions, of the Collateral Registry Office under this Act.

Appointment
of officers of
Collateral
Registry
Office

A.90

Functions of
Collateral
Registry Office

8. (1) The functions of the Collateral Registry Office shall be to –
(a) manage and facilitate the electronic access by users of the Registry;
(b) process fees;
(c) oversee the operation and maintenance of the registration system;
and
(d) collect statistical data relating to the Registry.

(2) Notwithstanding subsection (1) the Collateral Registry Office may carry out any other functions under this Act or any other written law.

Collateral
Registry

9. (1) There is established a Collateral Registry which shall be an electronic Registry.

(2) The function of the Registry shall be to receive, store and make accessible to the public, information on any registered notice with respect to a security interest and a right for non-consensual creditor.

Integrity of
information
in Registry

10. An officer of the Collateral Registry shall –

- (a) not, on his or her own motion, amend or delete information in the Registry records; and
- (b) preserve information contained in the Registry records and reconstruct the information in the event of loss or damage.

Public access
to Registry
records

11. The Collateral Registry Office shall be open to the public and any person may search the Registry electronically and obtain a copy of the search results in accordance with this Act and upon payment of such fee as may be prescribed.

Debtor's
authorisation
for registration

12. (1) A person who wishes to register an initial notice or amendment notice that either adds a collateral not included in a security agreement or adds a debtor shall be authorised to register the initial notice or amendment notice in writing by the debtor.

(2) A person may register an initial notice or amendment notice before or after the creation of a security interest or the conclusion of a security agreement to which the notice relates.

(3) Where a person registers an initial notice or amendment notice referred to under subsection (1) without the authorisation by a debtor, such registration shall not be enforceable.

(4) A written security agreement shall be sufficient to constitute authorisation by a debtor for the registration of an initial notice or amendment notice.

(5) The Collateral Registry Office –

- (a) shall not conduct any scrutiny of the information provided in a notice;
- (b) shall not be responsible for the accuracy of the legality of the information in a notice; and
- (c) may not require evidence of a written authorisation by the debtor to register an initial notice or amendment notice.

Single notice
sufficient for
multiple
security
agreements

13. A single initial notice registered in terms of this Act shall be sufficient for one or more than one security interest created by a debtor in favour of the same secured creditor arising out of any security agreement between the same parties.

- 14.** The Minister may prescribe the procedure for —
- (a) the registration of a notice;
 - (b) access to information by the public;
 - (c) the method for conducting a search of the Registry records;
 - (d) the assignment of a unique identification number to a debtor and a secured creditor; and
 - (e) the indexing of information.
- 15.** (1) A secured creditor who wishes to register an initial notice shall ensure that the initial notice contains the following information —
- (a) the identification number and address of the debtor;
 - (b) the identification number and address of the secured creditor or its representative;
 - (c) a description of the collateral in accordance with section 28;
 - (d) the period of effectiveness of the notice in accordance with section 18;
 - (e) a statement of the maximum amount for which the security interest may be enforced; and
 - (f) any other information as the Minister may prescribe.
- (2) A secured creditor shall, where an initial notice covers fixtures, timber to be cut or as-extracted collateral, include in the initial notice a reasonable description of where the fixtures, timber to be cut or as-extracted collateral is located.
- 16.** The registration of an initial notice or amendment notice shall be effective from the date and time the information in the initial notice or amendment notice is entered into the Registry and a registration number is assigned to it.
- 17.** (1) The Collateral Registry Office shall, immediately after the registration of an initial notice or amendment notice, provide electronically in such form as may be prescribed, proof of registration of the initial notice or amendment notice to the registrant.
- (2) The Collateral Registry Office shall ensure that the proof of registration referred to under subsection (1) contains information on the —
- (a) date and time when the registration became effective; and
 - (b) registration number.
- (3) A secured creditor shall, within 10 working days after receipt of the proof of registration referred to under subsection (1), submit a copy of such proof to the debtor.
- 18.** (1) A registered initial notice shall be valid for the period of time indicated by the registrant in the initial notice.
- (2) The period of validity of a registered initial notice may be —
- (a) extended within six months before the expiry of the period of time in the initial notice by the registration of an amendment notice that shall indicate a new period of validity; and
 - (b) extended more than once.

Procedure for registration, indexing of information, etc.

Information required for initial notice

Effect of registration

Obligation to provide proof of registration

Duration of registration of notice

A.92

Registration of amendment or cancellation notice

(3) A registered amendment notice which extends a validity period of an initial notice shall be valid for the period specified in the amendment notice beginning from the expiry period of the initial notice.

19. (1) A secured creditor may, in such manner as may be prescribed, register an amendment or cancellation notice relating to an initial notice registered by the secured creditor.

(2) Where an amendment notice of a registered initial notice relates to the change of a secured creditor of the registered initial notice to another secured creditor, the new secured creditor may register an amendment or cancellation notice of such registered initial notice.

(3) The registration of an amendment or cancellation notice of a registered initial notice by a new secured creditor shall not be effective unless authorised by a secured creditor who registered the initial notice.

Compulsory registration of amendment or cancellation notice

20. (1) A secured creditor shall register an amendment notice of an initial notice if the —

(a) registered initial notice contains information that exceeds the scope of the debtor's authorisation to register such initial notice; or

(b) security agreement to which the initial notice relates has been revised to delete some of the collateral.

(2) A secured creditor shall register a cancellation notice of an initial notice if the —

(a) registration of the initial notice was not authorised by the debtor;

(b) debtor withdraws authorisation of the registration of the initial notice where a security agreement has not been concluded between the debtor and the secured creditor; or

(c) security interest to which the initial notice relates has been disposed of and the secured creditor has no further commitment to provide value to the debtor.

(3) The debtor may, in writing, where any of the conditions under subsection (1) or (2) are met, request the secured creditor to register an amendment notice or cancellation notice and the secured creditor shall —

(a) comply with the request within 10 working days after receipt of such request; and

(b) not charge or accept any fee for complying with the debtor's request.

(4) Where a secured creditor fails to comply with subsection (3) (a), a debtor may request the Collateral Registry Office to register an amendment notice or cancellation notice and the Collateral Registry Office shall, before registering the amendment notice or cancellation notice, notify the secured creditor.

(5) A person who is aggrieved by a decision of the Collateral Registry Office may appeal to a court of competent jurisdiction against the decision, within 30 working days after the date on which the person is notified of the decision.

21. (1) An error in the name and identification number of a debtor in an initial notice or amendment notice shall not render the initial notice or amendment notice ineffective if the information in such initial notice or amendment notice may be retrieved by a search of the Registry records using the debtor's correct name and identification number.

Error in
required
information
by registrant

(2) An error in the name and identification number of the debtor shall not render the registration of the initial notice or amendment notice ineffective in respect to any other debtor correctly identified in such initial notice or amendment notice.

(3) An error in the information required for registering an initial notice or amendment notice other than the name and identification number of a debtor, shall not render the initial notice or amendment notice ineffective unless the error misleads a person.

(4) An error in the statistical information prescribed by the Minister shall not render the registration of an initial notice or amendment notice ineffective.

(5) An error in the description of a collateral shall not render ineffective the registration of an initial notice or amendment notice in respect to any other collateral correctly described in such initial notice or amendment notice.

(6) An error in the serial number of a vehicle that is not held as inventory shall render the registration of an initial notice or amendment notice in respect to the vehicle ineffective against a buyer or lessee of such vehicle.

22. (1) A secured creditor shall, where the identification of a debtor changes after an initial notice is registered, register an amendment notice indicating the new identification of the debtor within two months after the change and before the expiry of the period of the effectiveness of the initial notice.

Change in
identification
of debtor after
registration

(2) Where a secured creditor registers an amendment notice in terms of subsection (1), a security interest to which the amendment notice relates shall –

- (a) remain effective against third parties; and
- (b) retain the priority it had over the right of a competing claimant before the change.

(3) Where a secured creditor registers an amendment notice after the expiration period of the time provided for under subsection (1), a –

- (a) security interest created by the transferee in respect to which an initial notice is registered after the transfer and before the registration of the amendment notice shall have priority over the security interest to which such amendment notice relates; and
- (b) person who purchases, leases or licenses a collateral after the change in the identification of a debtor and before registration of the amendment notice shall acquire the collateral right free of the security interest to which such amendment notice relates.

A.94

Post-
registration
transfer of
collateral

23. (1) Where a security interest has been perfected and a collateral is transferred to a transferee that acquires the collateral subject to the security interest, such security interest shall remain perfected and shall retain the priority it had over the right of competing claimants before the transfer:

Provided that a secured creditor shall register an amendment notice adding the transferee as the new debtor within 10 working days after the secured creditor becomes aware of the transfer and such transferee's identification.

(2) Where a secured creditor registers an amendment notice after the expiration of the period of the time provided under subsection (1), a —

- (a) security interest created by the transferee in respect to which an initial notice is registered after the transfer and before the registration of the amendment notice shall have priority over the security interest to which such amendment notice relates; and
- (b) person who purchases, leases or licenses the collateral after its transfer and before the registration of the amendment notice shall acquire a collateral right free of the security interest to which such amendment notice relates.

(3) Subsections (1) and (2) shall, where there are successive transfers of a collateral, apply to the last transfer.

Evidentiary
provisions

24. A copy of, or extract from, a notice in the Registry which has been certified by the Collateral Registry Office to be a true copy or extract of the notice shall be —

- (a) admitted in any proceeding as of equal validity to the original document; and
- (b) conclusive evidence of the information stated in such notice.

Fraudulent
notice

25. Any person who fraudulently files a notice commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

Submission
of frivolous
or malicious
notice

26. A person who files a notice for registration with a frivolous, malicious or criminal purpose or intent commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both.

PART III — *Security Interests*

Creation of
security
interests

27. (1) A secured creditor shall create a security interest using a written security agreement and the security interest shall be effective between a debtor and the secured creditor in accordance with the terms of the security agreement.

(2) A security interest shall immediately become effective and enforceable between a debtor and a secured creditor upon creation if —

- (a) the debtor has a right in a collateral or the power to encumber the collateral;
- (b) there is a security agreement signed by a secured creditor and a debtor which —

- (i) reflects the intent of the parties to create a security interest,
- (ii) identifies a secured creditor and a debtor,
- (iii) describes a collateral as provided under section 28 or by a serial number for a serial-numbered vehicle that is not held as inventory,
- (iv) describes a secured obligation as provided in section 29, and
- (v) states the maximum amount for which the security interest may be enforced; and

(c) the value of a collateral has been given by the secured creditor.

(3) A security agreement shall not immediately become effective and enforceable in accordance with subsection (2) if a debtor and a secured creditor have agreed in a security agreement that a security interest shall become effective and enforceable at a later date and not upon creation, in which case the security interest shall be effective and enforceable at the date specified in the security agreement.

(4) A debtor and a secured creditor shall ensure that a security agreement contains a statement that the secured creditor has either, or through such secured creditor's agent, explained to the debtor, the effect of entering into the security agreement and that such debtor understands the explanation.

28. (1) A secured creditor may create a security interest in —

- (a) any type or combination of movable property;
- (b) a part of or an undivided interest in movable property;
- (c) a generic category of movable property; or
- (d) all of a debtor's movable property.

(2) A secured creditor shall describe a collateral secured or to be secured in a security agreement in a manner that reasonably allows for the identification of the collateral, and such description shall be sufficient if such collateral is described by —

- (a) the individual item, kind, type or the category of collateral;
- (b) a statement that a security interest is taken in all of a debtor's present and future movable property, where applicable, and excludes any specified item or kind of movable property as agreed by the debtor and the secured creditor; or
- (c) movable property or equipment of the debtor.

(3) A description of collateral shall be insufficient if a secured creditor describes the collateral as consumer goods without a specific description in accordance with subsection (2).

(4) A security agreement may provide for the creation of a security interest in the future movable property of a debtor and the security interest in the future movable property shall become effective only when the debtor acquires a right in the property or the power to encumber the movable property.

Provisions
applicable
to collateral

A.96

Provisions applicable to obligations

29. (1) A secured obligation shall be described in a security agreement in a manner that reasonably allows for the identification of the secured obligation.

(2) A description of a secured obligation that indicates that a security interest secured an obligation owed to a secured creditor shall be sufficient.

Security interest in accounts receivable

30. (1) A security interest in account receivable shall be effective between a debtor and a secured creditor, and against the account debtor, notwithstanding that a security agreement exists limiting the debtor's right to transfer such debtor's right in the accounts receivable for the purpose of creating a security interest.

(2) Nothing contained under subsection (1) shall affect any obligation or liability of a debtor for breach of a security agreement prohibiting the use of the account receivable as collateral and the account debtor may not —

- (a) avoid a contract giving rise to the account receivable or the security agreement on the sole ground of a breach of such security agreement; or
- (b) raise against a secured creditor any claim the account debtor may have against the debtor as a result of the breach.

Continuation of security interest after transfer

31. A security interest shall, once created, continue as a collateral notwithstanding a sale, lease, license, exchange or other disposition of the collateral, unless otherwise agreed by a debtor and a secured creditor.

Continuation of security interest in proceeds

32. (1) Unless otherwise agreed by a debtor and a secured creditor, a security interest shall automatically extend to the proceeds of a collateral, whether or not a security agreement contains a description of the proceeds.

(2) Where the proceeds are funds credited to a deposit account or are commingled with other funds, the security interest —

- (a) shall extend to the commingled funds, notwithstanding that the proceeds have ceased to be identifiable;
- (b) in the commingled funds shall be limited to the amount of funds immediately before they were commingled; and
- (c) in the commingled funds shall be limited to the lowest amount between the time when the proceeds were commingled and the time when the security interest in the proceeds is claimed:

Provided that at any time after the comingling, the balance credited to the deposit account or the amount of money is less than the amount of the proceeds immediately before they were commingled.

Extinguishment of security interests

33. A security interest shall be extinguished when —

- (a) a secured obligation has been discharged; and
- (b) there is no outstanding commitment to extend additional credit secured by the security interest.

- 34.** (1) A security interest —
- (a) created in a tangible asset before becoming commingled in a mass shall continue in the mass; and
 - (b) that extends to a mass shall be limited to the same proportion of the mass as the quantity of a collateral bore to the quantity of the entire mass immediately after the commingling.
- (2) A security interest —
- (a) created in a tangible asset that is made into a product extends to the product; and
 - (b) that extends to a product,
- shall be limited to the value of a collateral immediately before it becomes part of the product.
- 35.** A security interest in a negotiable document shall extend to a tangible asset covered by the negotiable document:
- Provided that the issuer of such negotiable instrument is in possession of such tangible asset at the time the security interest in the negotiable document is created.
- 36.** A security interest in —
- (a) a tangible asset in respect to which intellectual property is used shall not extend to the intellectual property; and
 - (b) intellectual property shall not extend to the tangible asset.

Tangible assets commingled in mass or made into product

Tangible assets covered by negotiable documents

Tangible assets and intellectual property used

PART IV — *Perfection of Security Interests*

- 37.** (1) A secured creditor shall perfect a security interest when —
- (a) the security interest is created; and
 - (b) a notice in respect of the security interest is registered in the Registry.
- (2) A secured creditor shall perfect a security interest in a tangible asset once the secured creditor or a person acting on behalf of the secured creditor has possession of the collateral.
- (3) A secured creditor shall perfect a security interest in a right to payment of funds credited to a deposit account in accordance with section 43.
- 38.** (1) Where a secured creditor perfects a security interest in an asset, the secured creditor shall also perfect a security interest in the proceeds of the asset without any further act, and shall continuously be perfected:
- Provided that the proceeds shall be in the form of money, account receivable, negotiable document, negotiable instrument or deposit account.
- (2) Where a secured creditor perfects a security interest in an asset and the proceeds of the asset are in a form other than money, account receivable, negotiable document or negotiable instrument or right to payment of funds credited to a deposit account, the secured creditor shall also perfect a security interest in the proceeds using one of the means available to the relevant type of proceed within 21 working days after the proceeds arise.

Primary methods for perfection of security interests

Perfection of security interest in proceeds

A.98

| | | | | | | |
|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|---------------------------------------------------------|------------------------------------------|
| Perfection of security interest in mass or product | Perfection of security interest in negotiable documents and related tangible assets | Perfection of security interest in consumable goods | Perfection of security interest in money | Perfection of security interest in deposit accounts | Perfection of security interest in agricultural produce | Transfer of perfected security interests |
| | <p>(3) Where a secured creditor fails to perfect a security interest in terms of subsection (2) after the proceeds arise, the security interest in such proceeds shall be unperfected and ineffective against any claim by a third party.</p> <p>39. Where a secured creditor perfects a security interest in a tangible asset, the secured creditor shall, without any further act, also perfect a security interest in a mass or product to which the security interest extends under section 34.</p> <p>40. (1) A secured creditor may perfect a security interest in a negotiable document by —</p> <ul style="list-style-type: none">(a) the registration of a notice with the Registry; or(b) possession of the negotiable document. <p>(2) A perfected security interest in a negotiable document shall extend to a tangible asset covered by the negotiable document.</p> <p>(3) A security interest perfected by possession of a negotiable instrument shall remain perfected for a period of 10 working days after the negotiable document or a tangible asset covered by such negotiable document has been returned to a debtor or any other person acting on behalf of the debtor for the purpose of dealing with the tangible asset.</p> | <p>41. A secured creditor shall perfect a security interest in consumer goods with an acquisition price that is below an amount to be prescribed.</p> <p>42. A secured creditor may perfect a security interest in money by taking —</p> <ul style="list-style-type: none">(a) possession of the money; or(b) control of the deposit account, <p>except in the case of the funds proceeds under section 32 (2).</p> <p>43. A secured creditor may perfect a security interest in funds credited to a deposit account —</p> <ul style="list-style-type: none">(a) automatically upon the creation of the security interest, if the secured creditor is a deposit-taking institution that maintains the deposit account;(b) upon conclusion of a control agreement; or(c) upon the secured creditor becoming the deposit account holder. | <p>44. (1) A secured creditor may perfect a security interest in agricultural produce that is stored, kept, growing or grown, as the case may be, on any land or premises.</p> <p>(2) A perfected security interest in agricultural produce under subsection (1) shall not be affected by a subsequent sale, lease, mortgage or other encumbrance of, or upon, the land on which the agricultural produce is stored, kept, growing or grown, as the case may be.</p> <p>45. (1) Where a secured creditor transfers a security interest either in whole or in part, the secured creditor may register an amendment notice to reflect the transfer.</p> | | | |

(2) The registration of a transfer of a security interest shall be effective on the date and time amendment notice is entered into the Registry.

46. Where a perfected security interest lapses, a secured creditor may re-establish the perfection of the security interest and such security interest shall be perfected from the time such perfection was re-established.

Lapses in perfection

47. (1) A secured creditor may change a method of perfection of a security interest.

Change in method of perfection of security interest

(2) A perfected security interest shall remain perfected:

Provided that the security interest is continuously perfected without any interruption of the perfection.

PART V — *Priority of Security Interests and Third Party Interests*

48. (1) Except as provided in this Part, the priority between security interests in the same collateral shall be determined as follows —

Priority of security interests in same collateral

(a) a perfected security interest shall have priority over an unperfected security interest in the same collateral;

(b) priority between two or more perfected security interests in the same collateral shall be determined by the order of the following actions, whichever occurs first —

(i) the registration of a notice with the Registry,

(ii) a secured creditor, or any other person acting on behalf of the secured creditor, taking possession of the collateral, except where the possession is a result of seizure or repossession,

(iii) the secured creditor acquiring control of the collateral, or

(iv) the temporary perfection of the security interest in accordance with this Act; and

(c) priority between unperfected security interests in the same collateral shall be determined by the order of the date of creation of the security interest.

(2) For the purposes of subsection (1), a security interest that is first perfected by using one method and later perfected in another method without interruption in perfection shall —

(a) be deemed to be continuously perfected; and

(b) retain its priority from the date of its original perfection.

49. Where a debtor transfers an interest in collateral which, at the time of the transfer, is subject to a perfected security interest, the perfected security interest shall have priority over any other security interest created by the transferee.

Priority of security interest transferred by debtor

50. Where a security interest in a collateral is perfected in terms of this Act, the priority of a security interest in the proceeds of the collateral shall be determined by using the same date used to determine the priority of the security interest in such collateral.

Priority of security interest in proceeds

A.100

Competing security interests in mass or product

51. (1) Where two or more perfected security interests in the same tangible asset that subsequently becomes part of a mass or product continues in the mass or product, the priority of each security interest in such mass or product shall be the same as the priority that each security interest has in that tangible asset immediately before the tangible asset became part of the mass or product.

(2) Where more than one security interest extends to the same mass or product and each security interest was in a separate tangible asset at the time of commingling, the security interests shall rank in proportion to the value of a collateral at the time the collateral became commingled.

Priority of security interest in accessions

52. A security interest in a tangible asset that is created at the time when the tangible asset becomes an accession shall have priority over a claim to such tangible asset made by a person with an interest in the whole asset.

Priority of acquisition security interest in fixtures

53. (1) A secured creditor may create a security interest in a tangible asset that is a fixture and the security interest may continue in the tangible asset after such tangible asset becomes a fixture.

(2) An acquisition security interest in a fixture shall have priority against a third party which has an existing right in an immovable property:

Provided that a notice is registered by a secured creditor in the Registry before the third party acquires a right in the immovable property.

Competing acquisition security interests

54. An acquisition security interest of a seller or lessor shall have priority over a competing acquisition security interest of a secured creditor other than a seller or a lessor.

Acquisition security interests in proceeds

55. (1) A security interest in proceeds, in the case of an acquisition security interest, shall have the same priority as the acquisition security interest.

(2) A security interest in proceeds, in the case of an acquisition security interest in inventory, livestock or intellectual property, shall have the same priority as the acquisition security interest, except where the proceeds take the form of a receivable, negotiable instrument, or a right to payment of funds credited to a deposit account.

(3) The priority of a security interest in proceeds referred to in subsection (2) shall be subject to an acquisition secured creditor notifying a non-acquisition secured creditor with a security interest in the same kind of a tangible asset or an intangible asset as the proceeds that, before the proceeds were generated, the acquisition secured creditor registered a notice with the Registry.

Competing acquisition security interests in mass or product

56. A perfected acquisition security interest in a tangible asset that extends to a mass or product shall have priority over a non-acquisition security interest granted by the same debtor in the mass or product.

57. (1) An acquisition security interest in equipment shall have priority over a competing non-acquisition security interest created by a debtor in the same collateral:

Non-acquisition security interests competing with acquisition security interests

Provided that the acquisition security interest shall be perfected before the debtor obtains possession of the collateral.

(2) An acquisition security interest in inventory, livestock, intellectual property or any other movable property held by a debtor for sale or lease in the ordinary course of the debtor's business, shall have priority over a competing non-acquisition security interest created by such debtor in the same collateral:

Provided that the —

- (a) acquisition security interest is perfected by the registration of a notice in the Registry before the —
 - (i) debtor obtains possession of the inventory or livestock, or
 - (ii) agreement for sale of the intellectual property to the debtor is concluded; and
 - (b) acquisition secured creditor notifies the competing non-acquisition secured creditor that the secured creditor has or intends to obtain an acquisition security interest, and the notification describes the tangible asset or intangible asset to reasonably allow its identification.
- (3) A notification in accordance with subsection (2)(b) —
- (a) may cover acquisition security interests under multiple transactions between the same parties without the need to identify each transaction; and
 - (b) shall be sufficient only for security interest in inventory of which a debtor obtains possession not later than the expiry of 30 working days after notification is received.

58. (1) Except as otherwise provided in this Act, where a collateral is sold, transferred, leased or licensed and a security interest in the collateral is perfected, a buyer, transferee, lessee or licensee shall acquire a right over such collateral subject to the security interest.

Buyers or other transferees, lessees and licensees of collateral

(2) A buyer, transferee, lessee or licensee of a collateral shall acquire a right over the collateral free of a security interest where a secured creditor authorises the sale, transfer, leasing or licensing of such collateral free of the security interest.

(3) The right of a lessee or licensee under this section shall not be affected by a security interest if a secured creditor authorises a debtor to lease or license a collateral.

(4) A buyer of a tangible asset sold in the ordinary course of a seller's business shall acquire a right free of a security interest:

Provided that at the time of the conclusion of a sale agreement, the buyer did not have knowledge that the sale violates the right of a secured creditor under a security agreement.

(5) The right of a lessee of a tangible asset leased in the ordinary course of a lessor's business shall not be affected by a security interest:

Provided that, at the time of the conclusion of the lease agreement, the lessee did not have knowledge that the lease violates the right of a secured creditor under a security agreement.

(6) The right of a non-exclusive licensee of an intangible asset licensed in the ordinary course of the licensee's business shall not be affected by a security interest:

Provided that, at the time of the conclusion of the licence agreement, the licensee did not have knowledge that the licence violates the right of a secured creditor under a security agreement.

(7) Where a buyer or transferee of a tangible asset acquires a right over the tangible asset free of a security interest, a subsequent buyer or transferee shall acquire a right over such tangible asset free of the security interest.

(8) Where the right of a lessee of a tangible asset or a licensee of an intangible asset, is not affected by a security interest, the right of a sub-lessee or sub-licensee shall not be affected by the security interest.

(9) The right of a buyer or lessee over a tangible asset shall not be affected by an acquisition of a security interest in consumer goods unless —

- (a) the security interest is perfected by registration of an initial notice; or
- (b) a secured creditor takes possession before the buyer or lessee acquires a right in the tangible asset.

59. (1) A non-consensual creditor's right shall have priority over a security interest if, before the security interest is perfected, the non-consensual creditor has registered a notice with the Registry.

(2) Where a security interest is perfected before a non-consensual creditor registers a notice —

- (a) the security interest shall have priority over the right of the non-consensual creditor; and
- (b) such priority shall be limited to credit extended by a secured creditor —
 - (i) within 30 working days from the time the secured creditor received a notification from the non-consensual creditor that such non-consensual creditor has registered a notice with the Registry, or
 - (ii) pursuant to an irrevocable commitment to extend the credit, if the commitment is made before the non-consensual creditor notifies the secured creditor that such non-consensual creditor has registered an initial notice with the Registry.

(3) For purposes of this section, "irrevocable commitment" means an activity where a creditor has not yet extended a credit but has committed by means of an agreement to doing so.

Security interests competing with rights of non-consensual creditors

60. (1) A statutory lien on a tangible asset which secures a payment or performance of an obligation for a material or service delivered with respect to an asset that is subject to a security interest shall have priority over a security interest if the —

- (a) material or service relating to the statutory lien is delivered in the ordinary course of business;
- (b) holder of the possessory lien remains in possession of the asset; and
- (c) statutory lien is up to a reasonable value of the material or service delivered.

(2) For the purposes of this section “statutory lien” means the right in an asset arising by operation of another law, given to a person that has provided services or materials with respect to the asset by repairing the asset or improving such asset, to secure payment or performance for the services or materials provided.

61. (1) A person may, at any time, subordinate a priority of that person’s security interest under this Act, in favour of any other existing or future competing interest without the need for a beneficiary to be a party to the subordination.

(2) A subordination under subsection (1) shall not affect the right of a competing claimant other than the right of a person subordinating that person’s priority and a beneficiary of the subordination, if the competing claimant is party to such subordination.

(3) An agreement to subordinate a priority of a security interest shall be effective according to its terms between the parties and may be enforced by a third party if the third party is the person for whose benefit the agreement is intended.

62. (1) Subject to the right of a non-consensual creditor under section 59, a priority of a security interest shall extend to a secured obligation, including an obligation incurred after the security interest is perfected.

(2) The priority of a security interest shall cover every collateral described in a notice registered with the Registry, irrespective of whether the collateral is acquired by a debtor, or comes into existence before or after the time of registration.

63. The knowledge by a secured creditor of the existence of a security interest in favour of another person shall not affect the priority of the security interest under this Act.

64. (1) A security interest in a negotiable instrument or negotiable document that is perfected by possession of the negotiable instrument or negotiable document shall have priority over a security interest in a negotiable instrument or negotiable document that is perfected by registration of a notice in the Registry.

(2) A transferee of a negotiable instrument shall acquire a right free of a security interest perfected by the registration of an initial notice in the Registry if the transferee —

Priority of
statutory liens

Subordination
of priority

Future
advances
and future
collaterals

Knowledge of
security interest
irrelevant

Negotiable
instruments
and negotiable
documents

A.104

- Cap. 46:02
- (a) qualifies as a holder in due course under the Bills of Exchange Act; or
- (b) takes possession of the negotiable instrument without knowledge that the transaction is a breach of the right of a secured creditor under a security agreement.
- Possession of money subject to security interest
- 65.** A transferee who obtains possession of money that is subject to a security interest shall acquire a right free of the security interest, unless the transferee has knowledge that the transfer violates the right of a secured creditor under a security agreement.
- Deposit accounts
- 66.** (1) A security interest —
- (a) in a right to payment of funds credited to a deposit account; and
- (b) perfected by a secured creditor by becoming the account holder, shall have priority over a competing security interest that is perfected by any other method.
- (2) A security interest in a right to payment of funds, credited to a deposit account where a secured creditor is a deposit-taking institution, shall have priority over a competing security interest perfected by any other method, except where the secured creditor becomes the account holder.
- (3) A security interest in a right to payment of funds credited to a deposit account perfected by a control agreement shall have priority over a competing security interest, except as provided in subsections (1) and (2).
- (4) The order of priority among competing security interests in a right to payment of funds credited to a deposit account that are perfected by conclusion of a control agreement shall be determined on the basis of the time of the conclusion of the control agreement.
- (5) A transferee of funds from a deposit account pursuant to a transfer initiated or authorised by a debtor shall acquire a right free of any security interest in the funds unless the transferee has knowledge that the transaction violates the right of a secured creditor under a security agreement.
- Payment of debt through payment systems
- 67.** A creditor who receives payment of a debt owing by a debtor through any payment system shall receive the payment free of a security interest, whether or not the creditor had knowledge of the security interest at the time of such payment.
- Taking possession of securities
- 68.** A transferee of unlisted securities who takes possession of certificated security and gives value without knowledge that the sale or any other transfer is in violation of the right of a secured creditor under a security agreement shall acquire a right free of a security interest.

PART VI — *Enforcement of Security Interests*

- Post-default rights
- 69.** (1) A secured creditor and a debtor shall, after default, be entitled to exercise —
- (a) any right under this Part; and

(b) any other right provided in the security agreement or any other written law, except to the extent that such right is inconsistent with the provisions of this Act.

(2) The exercise of one post-default right by a secured creditor or a debtor shall not prevent the exercise of another post-default right by the secured creditor or debtor, except to the extent that the exercise of one right makes the exercise of another right impossible.

(3) A debtor may, before defaulting to pay a debt, not waive unilaterally or vary by agreement any of its right under this Part without the consent of a secured creditor.

70. A secured creditor shall exercise a post-default right through a judicial process in a court of competent jurisdiction.

Methods of exercising post-default rights

71. A debtor or any other person shall, where a secured creditor fails to comply with any obligation under this Part, be entitled to apply for a relief to a court of competent jurisdiction.

Relief for non-compliance

72. (1) A debtor or any other person with an interest in a collateral shall be entitled to terminate an enforcement process and redeem the collateral by paying or otherwise performing the secured obligation in full, including the payment of all reasonable costs of enforcement.

Right of redemption

(2) The right of redemption provided under subsection (1) may be exercised at any time before the —

- (a) sale or other disposition, the acquisition or the collection of the collateral; and
- (b) conclusion of an agreement by the secured creditor for the sale or other disposition of the collateral.

(3) Where a secured creditor has leased or licensed a collateral to a third party, a debtor may exercise a right to redeem the collateral subject to the right of a lessee or licensee.

(4) The right of a debtor to redeem a collateral shall have priority over any other person's right to redeem the collateral.

73. (1) Where any other creditor commences enforcement proceedings, a secured creditor whose security interest has priority over that of the enforcing creditor shall be entitled to take over the enforcement at anytime before the —

Right of higher ranking secured creditor to take over enforcement

- (a) sale of other disposition, the acquisition or collection of the collateral; and
- (b) conclusion of an agreement by the secured creditor for the sale or other disposition of the collateral.

(2) The right of the higher ranking secured creditor to take over enforcement in terms of subsection (1) shall include the right to enforce security interest by the method available to a secured creditor under this Act.

A.106

Right of secured creditor to obtain possession of collateral

74. A secured creditor shall, subject to the right of any person, including a lessee or licensee with a superior right to possession, be entitled to obtain possession of a collateral after a default of payment by a debtor through a judicial process in a court of competent jurisdiction.

Secured creditor rendering collateral unusable

75. A secured creditor may render a collateral unusable if the collateral is of a kind —

- (a) that cannot be readily moved; or
- (b) for which adequate storage facilities are not readily available.

Right of secured creditor to dispose of collateral

76. (1) A secured creditor may, after a debtor has defaulted in payments, sell or dispose of, lease or license a collateral using a judicial process in a court of competent jurisdiction.

(2) Where a secured creditor exercises the right provided in subsection (1), the method, manner, time, place and other aspects of the sale or other disposition, lease or license shall be determined by the court.

Duty of secured creditor disposing of collateral

77. Subject to section 80 (4), a secured creditor who disposes of a collateral shall obtain the best price reasonably obtainable at the time of the sale or other disposal of such collateral.

Distribution of proceeds after disposition

78. (1) Where a secured creditor exercises the right provided under section 76 (1), the distribution of the proceeds of sale or other disposition, lease or license of a collateral shall be determined by the court in accordance with the provisions on priority in this Act.

(2) A holder of a subordinate security interest or other right shall, if requested by a secured creditor, furnish the secured creditor with reasonable proof of the subordinate security interest or other right within 10 working days where such secured creditor is required to comply with the demand by the holder of such subordinate security interest or other right for payment.

(3) A secured creditor who enforces a security interest may, whether or not there is a dispute as to the entitlement or priority of any competing claimant, pay the surplus of any net proceeds to a court for distribution in accordance with the provisions on priority in this Act.

Proposal to acquire collateral

79. (1) A secured creditor with priority over all other secured creditors may, where a debtor defaults in payment, in writing, propose to acquire some or all of a collateral in part or full satisfaction of a secured obligation.

(2) A proposal made in terms of subsection (1) shall include a statement —

- (a) that the secured creditor proposes to acquire the collateral described in the proposal in part or full satisfaction of a secured obligation;
- (b) of the amount required at the time the proposal is made to satisfy a secured obligation, including interest and a reasonable cost of enforcement, and the amount of the secured obligation that is proposed to be satisfied;

- (c) that a debtor, or any person with a right in a collateral is entitled to redeem the collateral as provided in section 72; and
 - (d) of the date after which a secured creditor will acquire the collateral.
- (3) Where a secured creditor with priority over all other secured creditors proposes to acquire a collateral in terms of subsection (1), the secured creditor shall, within five working days, submit the proposal to —
- (a) a debtor;
 - (b) any other secured creditor that registered a notice in respect to the collateral; and
 - (c) any person with a right or third party to the collateral who informs such secured creditor of the right.

80. (1) A person who is entitled to receive a proposal of acquisition of a collateral in terms of section 81(3) and whose interest in the collateral would be adversely affected by the proposal of acquisition of such collateral shall, within 15 working days after receipt of such proposal, serve a secured creditor with a written notice of objection.

Objection to
proposal to
acquire
collateral

(2) A secured creditor who has been served with a written notice of objection in terms of subsection (1) shall, upon receipt of the notice of objection, appeal to a court of competent jurisdiction, within 14 working days of such receipt.

(3) Where a person entitled to receive a proposal of acquisition of a collateral in terms of section 81(3) does not, within 14 working days after receipt of the proposal, object to such proposal, a secured creditor shall, at the expiration of the 14 working days, be deemed to have elected to take the collateral in part or full satisfaction of a secured obligation.

(4) Upon retention of a collateral by a secured creditor, all subordinate security interests and claims in the collateral shall be extinguished.

81. (1) Where a secured creditor sells or disposes of a collateral in execution of an order of any court of competent jurisdiction, the buyer or other transferee shall acquire the collateral free of any security interest.

Rights
acquired in
collateral

(2) Where a secured creditor leases or licenses a collateral in accordance with this Part, the lessee or licensee shall be entitled to the benefit of the lease or licence during its term, except as against a creditor with a right that has priority over the right of the enforcing secured creditor.

(3) Where a secured creditor sells, leases or licenses a collateral not in accordance with this Part, the buyer, lessee or licensee of the collateral shall acquire a right or benefit described in subsections (1) and (2):

Provided that the buyer, lessee or licensee had no knowledge that the secured creditor is not in compliance with this Part and the non-compliance materially prejudiced the right of a debtor or any other affected person.

A.108

Debtor may
reinstate
security
agreement

82. (1) A debtor may, at any time before a secured creditor disposes of a collateral in satisfaction of a secured obligation, reinstate a security agreement by —

- (a) paying the sums in arrears, exclusive of the operation of an acceleration clause in the security agreement;
- (b) remedying any other default;
- (c) paying a sum equal to the reasonable expenses incurred by the secured creditor in seizing, re-possession, holding, repairing processing, or preparing the collateral for disposal, if those expenses have actually been incurred by such secured creditor; or
- (d) paying any other reasonable expenses incurred by the secured creditor in enforcing the security interest,

unless the debtor has agreed otherwise, in writing, after default.

(2) Unless otherwise agreed by a secured creditor and a debtor, the debtor shall not be entitled to reinstate a security agreement more than twice every one year if a loan period is for more than one year.

Direct
collection
of payment

83. (1) A secured creditor with a security interest in an account receivable, negotiable instrument or a right to funds credited to a deposit account shall, upon default by a debtor —

- (a) be entitled to collect payment directly from the account debtor of the account receivable, a debtor under the negotiable instrument or deposit-taking institution; and
- (b) apply the funds collected to satisfy the obligation secured by the security interest after deducting the secured creditor's reasonable collection expenses.

(2) A secured creditor may exercise the right to collect under subsection (1) prior to default, if the secured creditor and the debtor so agree.

(3) A secured creditor who exercises the right to collect under subsection (1) or (2) shall be entitled to enforce any personal or property right that secures or supports payment of a collateral.

(4) Where a deposit-taking institution holds a security interest in a deposit account which is automatically perfected, the deposit-taking institution may apply the balance of the deposit account to a secured obligation.

(5) Where a secured creditor holds a security interest in the funds credited to a deposit account which is perfected by a control agreement, the secured creditor may instruct a deposit-taking institution to pay the balance of the deposit account to such secured creditor.

Collection
of payment
by outright
transferee
of account
receivable

84. (1) A transferee shall, in case of an outright transfer of an account receivable by agreement, be entitled to collect the amount receivable at any time after payment becomes due.

(2) A transferee who exercises the right to collect under subsection (1) shall be entitled to enforce any personal or property right that secures or supports payment of the account receivable.

PART VII — *General Provisions*

- 85.** Except as otherwise provided in this Act, the determination of whether movable property are consumer goods, inventory, equipment or agricultural produce shall be made at the time when a security agreement is concluded and a secured creditor may rely on the representations of a debtor as to the intended use. Classification of assets
- 86.** (1) A debtor may request a secured creditor to send or make available to any specified person, at an address specified by the debtor, any of the following — Secured creditor to provide information to debtor
- (a) a summary of a security agreement that creates or provides for a security interest held by the secured creditor in the movable property of the debtor;
 - (b) a statement in writing of the amount of the current indebtedness of the debtor and the terms of payment of the indebtedness;
 - (c) an itemised list of movable property indicating which items are collateral, unless the security interest is over all of the movable property of the debtor; or
 - (d) a statement of account indicating the pay-off amount needed to fully satisfy the secured obligation.
- (2) Where a secured creditor no longer has a security interest in a collateral, the secured creditor shall disclose the name and address of the —
- (a) immediate successor in interest or transferee; or
 - (b) latest successor in interest or transferee.
- (3) A secured creditor shall comply with a request made under subsection (1) within 14 working days of its receipt.
- 87.** (1) A secured creditor or debtor in possession of a collateral shall exercise reasonable care to preserve a tangible movable property. Obligations of parties in possession
- (2) A secured creditor shall have the right to inspect a collateral in possession of a debtor or another person.
- 88.** A person shall not be liable for any action in damages for anything done by any person in the exercise or performance of any power or function conferred or imposed on the person under this Act, unless the act or omission is done in bad faith or is due to want of reasonable care or diligence. Exemption from liability for actions or omissions
- 89.** A person who contravenes a provision of this Act where no penalty has been provided commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding three years, or to both. General penalties
- 90.** (1) The Minister may make regulations providing for any matter 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 the provisions of this Act. Regulations

A.110

- (2) Without limiting the generality of subsection (1), the regulations may provide for any of the following matters —
- (a) the conduct of the business of the Registry;
 - (b) the form and process for registering a notice with the Registry;
 - (c) the procedure to be followed in connection with any application or request by the public for access to the Registry, including the procedure for conducting a search of the Registry records;
 - (d) the assignment of unique identification number to a secured creditor and debtor;
 - (e) the provision and certificate of a copy of a notice registered in the Registry;
 - (f) the means for indexing information submitted to the Registry;
 - (g) the service of notices and other documents with respect to the Registry;
 - (h) the payment of fees in respect of any matter in this Act; and
 - (i) any matter required to be provided for in relation to the Collateral Registry Office.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

SOCIETIES ACT, 2022

No. 6



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Appointment of Registrar
4. Establishment of society
5. Application for registration
6. Refusal of registration
7. Disqualification for office-bearers
8. Register
9. Cancellation of registration
10. Consent of Registrar
11. Publication of registration and cancellation
12. Cessation of existence of society
13. Particulars to be furnished by societies
14. Office-bearers
15. Presumptions of membership
16. Winding up of society
17. Application of assets and costs of winding up
18. Search warrants
19. Powers of Registrar to summon witness
20. Inspection of premises
21. Establishment of Advisory and Arbitration Council
22. Membership of Council
23. Functions of Council
24. Meetings of Council
25. Quorum and procedure at meetings
26. Co-opted members
27. Service of documents
28. Evidence
29. Accounts and audits
30. Regulations
31. Repeal of Cap. 18:01
32. Savings and transitional provisions

A.112

An Act to regulate the registration, monitoring and supervision of societies and matters incidental thereto and connected with.

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

| | |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Short title | 1. This Act may be cited as the Societies Act, 2022. |
| Interpretation | 2. In this Act, unless the context otherwise requires — |
| Cap. 24:01 | “authorised officer” means an officer of the Registrar authorised by the Registrar to perform duties under this Act; |
| | “ammunition” has the same meaning assigned to it under the Arms and Ammunition Act; |
| | “arms” has the same meaning assigned to it under the Arms and Ammunition Act; |
| | “Council” means the Advisory and Arbitration Council established under section 21; |
| Cap. 08:07 | “financial offence” has the same meaning assigned to it under the Financial Intelligence Act; |
| | “illegal society” means a society in terms of section 5 (7) that operates without a certificate of registration of approval issued by the Registrar of societies; |
| | “illicit dealing in arms or ammunition” means a contravention of any of the provisions of Parts IV to VI of the Arms and Ammunition Act; |
| Cap. 08:03 | “money laundering” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act; |
| | “office-bearer” of a society means any elected, appointed or co-opted person who is a member of the board, committee or governing body thereof; |
| Cap. 08:08 | “proliferation” has the same meaning assigned to it under the Counter Terrorism Act; |
| | “register” means a register of societies that is kept and maintained by the Registrar under section 8; |
| | “Registrar” means the Registrar of Societies appointed under section 3; and |
| | “society” means any association of 150 or more persons for a religious society and 20 or more persons for any other society, formed primarily for raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes. |
| Appointment of Registrar | 3. (1) The Minister shall by Notice published in the <i>Gazette</i> appoint a public officer to be the Registrar. (2) The Registrar shall, subject to any directions given by the Minister, be charged with the general administration of this Act and shall not be liable to a suit or to prosecution in respect of anything done in good faith in execution of his or her duties. |

- 4.** (1) A society shall be considered to be established in Botswana if —
- (a) it has its headquarters or principal place of business in Botswana; and
 - (b) at least two thirds of its office-bearers reside in Botswana.
- (2) When establishing a society, in accordance with the provisions of subsection (1), the Registrar shall verify the identity of a person who controls or directs the activities of the society including a senior office bearer and board member.
- 5.** (1) A society shall within 28 days of formation, make an application in such form as may be prescribed to the Registrar for registration.
- (2) An application for registration of a society shall be accompanied by —
- (a) such particulars as the Registrar may consider necessary;
 - (b) a prescribed application fee; and
 - (c) an inspection report on the premises of the society by an authorised officer.
- (3) The Registrar shall, upon receipt of an application for registration of a society approve and register a society.
- (4) The Registrar shall, after the registration of a society, issue a certificate of registration to a society in such form as may be prescribed, which certificate of registration shall be evidence of registration of the society.
- (5) A certificate of registration issued under subsection (4), shall be valid for a period stipulated on the certificate.
- (6) A society shall not operate, unless the society has been issued with a certificate of registration by the Registrar.
- (7) A society shall be considered an illegal society if it operates without a certificate of registration.
- 6.** (1) The Registrar may refuse to register a society where he or she is satisfied that —
- (a) the objects of the society are unlawful and prejudicial to the peace, welfare or good order;
 - (b) the society, within 90 days immediately after being required under section 5 (2) to provide information, fails to provide the information so required;
 - (c) the office-bearers of the society are unable to keep proper records of meetings of the society and of its members and the control and management of the financial affairs of the society and of its property, and to perform the duties imposed on them by this Act;
 - (d) the application of registration of a society does not comply with this Act;
 - (e) has not adopted its own constitution;
 - (f) the constitution of the society is repugnant to or inconsistent with any written law; and
 - (g) the Registrar is satisfied that the society does not exist;

Establishment
of societyApplication for
registrationRefusal of
registration

- (h) the name under which the society is to be registered —
 - (i) is identical to that of any other existing society,
 - (ii) so nearly resembles the name of such other society as, in the opinion of the Registrar, to be likely to deceive the public or the members of either society, and
 - (iii) is, in the opinion of the Registrar, repugnant to or inconsistent with any written law,
- (i) there is reasonable suspicion that the society has committed a financial offence;
- (j) the society or its office bearer is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (k) the society or its office bearer is affiliated with a society that is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (l) the society provides funding or support for terrorist activities or finances proliferation or illicit dealing in arms or ammunition;
- (m) an office-bearer of the society has been found guilty of a crime, in the area the society wishes to operate in, either in or outside Botswana; and
- (n) an officer-bearer holds another office in a society operating in the same space.

(2) Where the Registrar rejects an application for registration, the society may within 28 days after the date of such rejection, appeal to the Minister.

(3) Any person or society aggrieved by a decision of the Minister may appeal to the High Court within 30 days of receiving notice of such decision.

Disqualification
for office-
bearers

7. A person shall not qualify for appointment as an office bearer if he or she has —

- (a) in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made an assignment to, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
- (b) within the period of 10 years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence within Botswana, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence is suspended or not, and for which he or she has not received a free pardon.

Register

8. (1) The Registrar shall keep and maintain a register of societies registered under this Act.

(2) Any person may inspect the register or any documents relating to any entry in the register, and may obtain from the Registrar a copy of or an extract from the register or any such document, on payment of the prescribed fee.

9. (1) The Registrar may cancel registration of a society where the society —

Cancellation
of registration

- (a) has changed its objects without the consent of the Registrar;
- (b) has failed to comply with the provisions of section 13;
- (c) or its office bearer is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (d) or its office bearer is affiliated with a society that is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (e) provides funding or support for terrorist activities or finances proliferation or illicit dealing in arms or ammunition; or
- (f) contravenes any other written law.

(2) The Registrar shall —

- (a) notify the society in writing of his or her intention to cancel the registration of a society; and
- (b) give a society 21 days from date of notification within which the society may give reasons why the Registrar shall not cancel the society's registration;

(3) The Registrar may, after the expiry of the 21 days referred to under subsection (2), and after considering reasons submitted by the society, notify the society in writing of his or her decision to cancel the registration of the society within 28 days.

(4) A society shall surrender a certificate of registration issued under section 5 (4) to Registrar within 21 days of receipt of cancellation notice.

(5) Where a society fails to surrender the certificate of registration within the period provided for in subsection (4), every person who is an office-bearer of the society at the date of the cancellation of the society's registration shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Registrar.

10. (1) A society shall not change —

Consent of
Registrar

- (a) its name;
- (b) any provisions of its constitution;
- (c) any of its objects;
- (d) its office registered under this Act;
- (e) postal address to which all communications and notices may be addressed; and
- (f) officers or title of any officers,

without obtaining prior consent of the Registrar in writing.

(2) A society shall, within 14 days of effecting any change under this section, notify the Registrar of the changes and the Registrar shall register the changes.

(3) Where a society fails to comply with the provisions of this section, every office bearer of the society shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Registrar.

A.116

Publication of registration and cancellation

11. The Registrar shall by Notice in the *Gazette* publish the registration and cancellation of societies registered under this Act.

Cessation of existence of society

12. (1) A society shall notify the Registrar, in writing of cessation of existence of such society.

(2) The Registrar shall publish a notice in the *Gazette* calling upon a society to furnish the Registrar with proof of its existence within three months from the date of such publication.

(3) Where a society ceases to be a society under this Act, such society shall cease to operate as a registered society.

Particulars to be furnished by societies

13. (1) The Registrar may, by notice in writing, order a society to furnish him or her with the following particulars —

(a) a true and complete copy of the constitution and rules of the society;

(b) a true and complete list of office-bearers and members residing or present in Botswana;

(c) a true and complete return of the number of meetings held in Botswana within the period of six months immediately preceding the order, stating the place or places at which such meetings were held; and

(d) accounts, returns and other particulars as may be determined.

(2) A notice under subsection (1), shall specify the time not less than 21 days within which the particulars shall be supplied.

(3) Any order made by the Registrar in relation to any society under this section shall be binding upon every office-bearer served with an order and upon every person managing or assisting in the management of the society served with an order.

(4) Where a society fails to comply with the provisions of this section, every office bearer of the society shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Registrar.

(5) A person who supplies incorrect or incomplete particulars to the Registrar shall be liable to an administrative fine not exceeding P50 000, as may be imposed by the Registrar.

(6) The Registrar may, where it appears to him or her, to be in the interest of the members of a society, publish in the *Gazette*, a newspaper of wide circulation or any other manner as the Registrar may consider necessary, any matter furnished by or on behalf of such society to the Registrar under this section.

Office bearer

14. A person who —

(a) is an office-bearer of an illegal society;

(b) manages or assists in the management of an illegal society;

(c) solicits or collects money or subscriptions on behalf of an illegal society;

(d) knowingly is or acts as a member of an illegal society; or

(e) knowingly allows a meeting of an illegal society or to be held in any house, building or place belonging to or occupied by him or her, or over which he or she has control,

commits an offence and shall be liable to a fine not exceeding P50 000 or to imprisonment for a period not exceeding six years, or to both.

- 15.** (1) Where any books, accounts, writings, list of members, seals, banners or insignia of, or relating to, or purporting to relate to, any society are found in possession of any person, it shall be presumed, until the contrary is proved, that such person is a member of such society, and such society shall be presumed, until the contrary is proved, to be in existence at the time such books, accounts, writings list of members, seals, banners or insignia are so found. Presumptions of membership
- (2) Where any books, accounts, writings, list of members, seals, banners or insignia of, or relating to, any society are found in the possession of any person, it shall be further presumed, until the contrary is proved, that such person assists in the management of such society.
- 16.** (1) The Registrar shall by Notice published in the *Gazette* wind up a Society if — Winding up of society
- (a) two thirds majority of the members of the society resolved that the society be wound up; and
- (b) a society has failed to comply with the provisions of this Act.
- (2) The Registrar shall take into consideration any objection by any creditor, contributory, or other person interested.
- (3) The Registrar may, for the purpose of enabling a society to wind up its own affairs, suspend any operation of such a society.
- 17.** (1) In winding up a society, the assets shall be applied in payment of the costs, charges and expenses incurred in the winding up and claims of creditors. Application of assets and costs of winding up
- (2) The costs and charges incurred, and all advances made by the Registrar on account of the society, shall be costs in the winding up.
- (3) The Registrar may direct that property or monies remaining after costs and charges of winding up of a society be donated to any charitable organisation.
- 18.** (1) The Registrar may in the execution of his or her duties under this Act, apply to a judicial officer for a warrant of search where — Search warrants
- (a) a society is prejudicial to public peace, or to welfare or good order;
- (b) premises are used —
- (i) for meeting of an illegal society, or
- (ii) for the concealment, custody or deposit of any books, accounts, writings, list of members, banners, seals, insignia, arms or other articles belonging to any illegal society.
- (2) A judicial officer may by warrant referred to under subsection (1) permit any authorised officer to search any premises suspected to be used as a place of meeting of an illegal society.
- (3) A search warrant issued under subsection (1) shall —
- (a) be in writing;
- (b) bear the seal of the court issuing it; and
- (c) remain in force until executed or cancelled by the court which issued it.

A.118

(4) A search warrant may be issued on any day, including Sundays and public holidays, but may be executed only between the hours of sunrise and sunset unless the judicial officer, by the warrant specifically authorised it to be executed at any other time, in which case it may be executed.

Powers of Registrar to summon witness

19. (1) The Registrar may, in writing, summon before him or her any person to give any information of an existence or operations of an illegal society or any registered society.

(2) A person summoned shall attend at a place and time as specified in the summons, and produce all documents in his or her custody, possession or power relating to such society or suspected society, and answer truthfully all questions which the Registrar may put to him or her.

(3) A person who fails to comply with the provisions of this section shall be liable to an administrative fine not exceeding P25 000, as may be imposed by the Registrar.

(4) No statement made by a person summoned before the Registrar under this section shall subject him or her to any criminal prosecution, except a prosecution for failing to answer truthfully under this section.

Inspection of premises

20. (1) An authorised officer may at any time enter business premises to —

- (a) conduct a routine inspection for the purposes of ensuring that the operations of a society comply with the provisions of this Act;
- (b) caution a person on the premises about a contravention of this Act; or
- (c) require a person on the premises to furnish any information including documents in his or her possession relating to the activities conducted on the premises, and by whom the activities are conducted.

(2) A person who refuses an authorised officer entry into the premises shall be liable to an administrative fine not exceeding P25 000, as may be imposed by the Registrar.

Establishment of Advisory and Arbitration Council

21. There is hereby established a Council to be known as the Advisory and Arbitration Council.

Members of Council

22. (1) The Council shall consist of the following members appointed by the Minister —

- (a) six persons from different societies;
- (b) one person from the general public, with expertise in matters related to societies;
- (c) the Permanent Secretary of the Ministry responsible for registration of societies under this Act, who shall be an *ex-officio* member; and
- (d) a lawyer from the Attorney General’s Chambers, who shall be an *ex-officio* member.

(2) The Minister shall appoint the Chairperson of the Council from the general public, with expertise in matters related to societies.

(3) The Vice Chairperson of the Council shall be elected by the members of the Council among their number.

(4) A member of the Council shall —

- (a) hold office for a period not exceeding four years; and
- (b) be eligible for re-appointment for a further period not exceeding four years.

(5) The Minister shall —

- (a) by notice in the *Gazette*, publish the appointment of the members of the Council, specifying the dates of appointment and the period for which they are appointed to the office of the Council; and
- (b) when specifying the period for which members of the Council are appointed, ensure that the appointment of one third or less of the members of the Council does not expire in one year.

23. The functions of the Council shall be to —

- (a) guide and advise the Minister on issues of registration of societies, which shall include to assess and —
 - (i) review matters referred to it by the Registrar, and
 - (ii) make recommendations on specific applications for registration, referred to it by the Registrar,
- (b) arbitrate in cases of dispute in the registered societies, and other disputes that may arise between societies; and
- (c) engage in the promotion and development of policy issues concerned with societies.

Functions of
Council

24. (1) Subject to the provisions of this Act, the Council shall regulate its own procedure and establish such committees as it considers appropriate, and may delegate, to any such committee, any of its functions as it considers necessary.

(2) The Council shall meet —

- (a) at least once every three months;
- (b) whenever it considers necessary to conduct its business; or
- (c) when directed to do so by the Minister.

Meetings of
Council

25. (1) The quorum at any meeting of the Council shall be a simple majority of the members.

(2) There shall preside, at any meeting of the Council —

- (a) the Chairperson; or
- (b) in the absence of the Chairperson, the Vice Chairperson.

(3) A decision of the Council on any question shall be by a simple majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberative vote.

Quorum and
procedure at
meetings

26. (1) The Council may co-opt any person to attend any meeting of the Council on any matter for the purpose of assisting or advising the Council, but such person shall have no right to vote.

Co-opted
members

(2) Any member or any person co-opted under subsection (1), present at a meeting of the Council at which any matter in which the member or the person co-opted, or their immediate family members, is directly or indirectly interested in a private capacity is the subject of consideration —

- (a) shall immediately after the commencement of the meeting, disclose the interest;
- (b) shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on any question touching on the matter; and
- (c) such interest shall be recorded in the minutes of the meeting at which it is made.

(3) A member or a person co-opted under subsection (1) who fails to disclose an interest under subsection (2) and a decision is made benefiting the member or the person co-opted, or their immediate family members, such decision shall be null and void to the extent that it benefits such member or such person co-opted, or their immediate family members.

(4) A member of the Council or a person co-opted under subsection (1) shall —

- (a) observe and preserve the confidentiality of all matters coming before the Council, and such confidentiality shall subsist even after the termination of their terms of office or their mandate; and
- (b) where confidential information is revealed to them through working with the Council, not disclose the information to any other person unless required to do so in terms of any written law or purposes of judicial proceedings.

(5) Any member of the Council or any person co-opted under section (1) shall be paid such remuneration, and such allowances, if any, as the Minister may determine.

(6) A member of the Council or any person co-opted who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

Service of documents

27. (1) Every order, notice, summons or other document issued under this Act, shall be considered to have been validly served on the person to whom it is addressed if it is personally served, or sent by pre-paid registered post addressed to him or her at the registered office of the society with which he or she is concerned.

(2) Every order, notice or other document issued under this Act, or under any regulations made under this Act, shall be considered validly served on a society if it is sent by pre-paid registered post addressed to the society at its registered office.

(3) Any document served by being sent by registered post shall be considered to have reached the person or society to whom or to which it is addressed within 96 hours of posting.

28. In any prosecution under this Act, it shall be no objection to the admissibility of evidence as to the constitution, objects or activities of any society that the witness tendering such evidence is not or has not been a member of any illegal society.

Evidence

29. (1) The Registrar shall —

Accounts and audits

- (a) keep and maintain proper accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of a society;
- (b) cause to be prepared in respect of each financial year and not later than three months after the end of that financial year, a statement of such accounts; and
- (c) provide any other information in respect of the financial affairs of a society as the Minister responsible for finance may require.

(2) The accounts of a society in respect of each financial year shall, within four months of the end of each financial year, be audited by an auditor appointed by the Minister.

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

- (a) auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) accounts and related records of a society have been properly kept; and
- (c) society has complied with all financial provisions of this Act with which it is the duty of the Registrar to comply with.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion, be forwarded to the Registrar by the auditor.

30. (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) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) prescribing the manner of registration of societies under this Act;
- (b) regulating or restricting changes of the name or objects of societies;
- (c) prescribing the forms which may be used for carrying out the provisions of this Act;
- (d) for securing the submission to the Registrar of accounts relating to the assets and liabilities, and the income and expenditure, of societies, in such form and at such time and in respect of such period as may be prescribed;
- (e) prescribing the fees payable under this Act;

- (f) securing the submission to the Registrar of annual or other periodical returns relating to the constitution, objects, membership and management of societies in such form as may be prescribed;
- (g) declaring any society not to be a society for the purposes of this Act; and
- (h) prescribing anything to be prescribed under this Act.

(3) Any regulations made under this section may provide that any person who contravenes any provision of such regulations commits an offence and shall be liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding seven years, or to both.

Repeal of
Cap. 18:01

31. The Societies Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

Savings and
transitional
provisions

32. (1) Every existing society shall apply to the Registrar for re-registration in such form as may be prescribed.

(2) An application referred to in subsection (1), shall be made within 12 months after the commencement of this Act or such longer period not exceeding twelve months as may be specified by the Minister by Order published in the *Gazette*.

(3) An existing society that has not made an application for the re-registration within the transition period shall be deemed to be de-registered and shall be removed from the register of societies by the Registrar.

(4) A society that has been removed from the register of societies may apply to the Registrar for registration in accordance with section 5 of this Act.

(5) All subsidiary legislation made under the repealed Act, and in force immediately prior to coming into operation of this Act, shall in so far as is not consistent with the provisions of this Act, continue in force as if made under this Act.

PASSED by the National Assembly this 3rd day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

COMPANIES (AMENDMENT) ACT, 2022

No. 7



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 2 of Cap. 42:01
3. Amendment of section 11
4. Amendment of section 21
5. Amendment of section 22
6. Amendment of section 27
7. Amendment of section 37
8. Amendment of section 38
9. Deletion of section 39
10. Amendment of section 40
11. Amendment of section 41
12. Amendment of section 42
13. Amendment of section 43
14. Amendment of section 50
15. Amendment of section 84
16. Amendment of section 88
17. Amendment of section 113
18. Amendment of section 134
19. Amendment of section 186
20. Amendment of section 218
21. Insertion of section 329A.
22. Amendment of section 352
23. Amendment of section 408
24. Amendment of section 461
25. Amendment of section 492

An Act to amend the Companies Act.

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Companies (Amendment) Act, 2022 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

A.124

Amendment
of section 2
of Cap. 42:01

Cap. 08:07

Act No. 5
of 2022

Amendment
of section 11

Amendment
of section 21

2. The Companies Act (hereinafter referred to as “the Act”) is amended in section 2 (1) by —

- (a) substituting for the definition of “beneficial owner” the following new definition —
““beneficial owner” has the meaning assigned to it under the Financial Intelligence Act;”;
- (b) substituting for the definition of “entitled person” the following new definition —
““entitled person”, in relation to a company, means a —
 - (a) shareholder;
 - (b) person upon whom the constitution confers any of the rights and powers of a shareholder; and
 - (c) beneficial owner;”;
- (c) inserting in the correct alphabetical order, the following new definitions —
““Collateral Registry” means the Collateral Registry established under the Movable Property (Security Interests) Act;
“competent authority” has the meaning assigned to it under the Financial Intelligence Act and includes a foreign comparable body;
“nominator” means a person who issues instructions to a nominee to act on their behalf in a certain capacity, and includes a shadow director and silent partner; and
“security interest” has the meaning assigned to it under the Movable Property (Security Interests) Act;”.

3. The Act is amended in section 11 —

- (a) subsection (1), by inserting immediately after paragraph (c), the following new paragraph —
“(d) beneficial owner information of companies registered or deemed to be registered under this Act for a period of seven years.”; and
- (b) subsection (2), by inserting immediately after the words “to be” appearing therein, the words “publicly available and”.

4. The Act is amended in section 21 by —

- (a) substituting for subsection (2) (c), the following new paragraph —
“(c) the full name and residential address of every shareholder or member of the proposed company, and in the case of a company limited by shares, the number of shares to be issued to every shareholder and the amount to be paid or other consideration to be provided by that shareholder for the issue of those same shares, including —
 - (i) the full name and residential address of every beneficial owner of the proposed company, including the amount to be paid or other consideration to be provided by the beneficial owner,

- (ii) where a company is identified as the beneficial owner, information of the natural persons who own, hold shares and control that company, their full names, residential addresses and categories and the number of shares they hold or their interests in that company expressed as a percentage,
- (iii) where a natural person identified as the beneficial owner, the position to be held by the person if the person is in a managerial position, and
- (iv) where some of the shares are to be held by a foreign company, the identification of natural persons who own, hold shares and control the foreign company, their full names, residential addresses and categories and the number of shares they hold or their interests in the foreign company expressed as a percentage;”.

5. The Act is amended in section 22 by inserting the following new subsection immediately after subsection (2) —

Amendment
of section 22

- “(3) The Registrar shall, after entering the particulars of the company in the register under subsection (1), verify the beneficial owner information submitted in terms of section 21 using —
- (a) information held by financial institutions and other competent authorities;
 - (b) where disclosure requirements ensure transparency of beneficial owners, information on listed companies; or
 - (c) any other documents as the Registrar may determine.”.

6. The Act is amended in section 27 by inserting the following new subsection immediately after subsection (4) —

Amendment
of section 27

- “(5) Notwithstanding the provisions of this section, a director who is resident in Botswana, the secretary of the company and, in the case of a close company, an accounting officer shall —
- (a) be accountable to any competent authority for providing all basic information and beneficial owner information of the company, including facilitating access to such information;
 - (b) provide, on request from a competent authority, the information in paragraph (a) within three days of such request being made; and
 - (c) cooperate with the competent authority and effectively provide all assistance that the competent authority may reasonably require.”.

7. The Act is amended in section 37 by substituting for the section, the following new section —

Amendment
of section 37

“Requirement
for company
to have
constitution

37. (1) A company, including a close company, shall have a constitution.

(2) A company which, prior to the commencement of this section, was not required to have a constitution, shall submit, to the Registrar, a constitution in the manner prescribed in the First Schedule within one year from the date of commencement of this section.

(3) If a company fails to submit a constitution within the period prescribed in subsection (1), the Registrar shall in accordance with section 252 deregister the company.

(4) The Registrar may, subject to section 343, restore a company under subsection (3) upon —

(a) submission of a constitution in terms of subsection (2) notwithstanding that the one year period has lapsed; and

(b) payment, by the company that is restored, of a penalty of P2500 or such fee as may be prescribed from time to time.”.

Amendment of section 38

8. The Act is amended in section 38 by substituting for section 38, the following new subsection —

“Effect of Act on constitution” 38. (1) A company, the Board, each director and each shareholder of the company shall have the rights, powers, duties, and obligations set out in this Act except to the extent that they are negated or modified, in accordance with this Act, by the constitution of the company.

(2) Notwithstanding subsection (1), the members of a close company shall have the rights, powers, duties and obligations set out in Part XIX except to the extent that they are negated or modified, in accordance with that Part, by the constitution of the company.”.

Deletion of section 39

9. The Act is amended by deleting section 39.

Amendment of section 40

10. The Act is amended in section 40 by deleting —

(a) the words “if it has one” appearing in the chapeau; and

(b) paragraph (b).

Amendment of section 41

11. The Act is amended by substituting for section 41, the following new section —

“Contents of constitution” 41. Subject to section 25 (2), the constitution of a company may contain —

(a) matters contemplated by this Act for inclusion in the constitution of a company;

(b) powers that regulate and bind the company, the names of natural persons having control over the company and those in senior management positions in terms of section 21; and

(c) such other matters as the company wishes to include in its constitution.”.

12. The Act is amended in section 42 by inserting immediately after the words “company” appearing in subsection (2) (a), the words “, each director”.

Amendment
of section 42

13. The Act is amended in section 43 by deleting the words “that does not have a constitution” appearing in subsection (1).

Amendment
of section 43

14. The Act is amended in section 50 by substituting for subsection (1), the following new subsection —

Amendment
of section 50

“(1) Subject to this Act and the constitution of the company, the Board of a company may issue shares at any time, to any person, and in any number it considers appropriate:

Provided that —

- (i) no shares may be issued to bearer or an unidentified shareholder; and
- (ii) where the constitution of the company contains a provision authorising the company to issue shares to the bearer or an unidentified shareholder, the company shall immediately amend its constitution to remove such provision and deliver a copy of the amended constitution to the Registrar within a month from the date of commencement of this section.”.

15. The Act is amended in section 84 by —

Amendment
of section 84

(a) substituting for subsection (2), the following new subsection —

“(2) The principal register shall be kept —

- (a) in Botswana;
- (b) at the registered office of the company; and
- (c) at the office of the secretary of the company.”;

(b) substituting for subsection (3), the following new subsection —

“(3) If a share register is divided into two or more registers kept in different places —

- (a) notice of the place where each register and beneficial owner information is kept shall be delivered to the Registrar for registration within 10 working days after the share register is divided or any place where a register or beneficial owner information is kept is altered;
- (b) a copy of every register and beneficial owner information shall be kept at the same place as the principal register; and
- (c) if an entry is made or beneficial owner information is entered in a register other than the principal register, a corresponding entry shall be made within 10 working days in the copy of that register kept with the principal register.”; and

(c) substituting for subsection (4), the following new subsection —

“(4) In this section “principal register”, in relation to a company —
(a) means —

A.128

- Amendment of section 88

 - (i) if the share register is not divided into two or more registers, the share register, or
 - (ii) if the share register is divided into two or more registers, the register described as the principal register in the last notice sent to the Registrar and every other register shall be a “branch register”; and

(b) includes beneficial owner information.”.

16. The Act is amended by substituting for section 88, the following new section —

“Trusts not to be entered 88. No notice of a trust, whether express, implied, or constructive, may be entered on the share register or be received by the Registrar, except where the beneficial owner is a trust.”.
- Amendment of section 113

17. The Act is amended in section 113 by substituting for subsection (1), the following new subsection —

“(1) Any mortgage bond or notarial bond in pursuance of the provisions of section 112 and subsequent transactions relating thereto shall, subject to the laws governing registration of —

 - (a) mortgage bonds and notarial bonds, be registered in the Deeds Registry; and
 - (b) security interest in movable property, be registered in the Collateral Registry.”.
 - Amendment of section 134

18. The Act is amended in section 134 by —

 - (a) inserting in subsection (1), immediately after the word “company” appearing in the chapeau, the words “or beneficial owner”;
 - (b) inserting in subsection (1) (c), immediately after the word “director,” appearing therein, the words “beneficial owner,”; and
 - (c) substituting for subsection (2), the following new subsection —

“(2) For the purposes of this Act, a director or beneficial owner of a company is not interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of security to a third party which has no connection with the director or beneficial owner, at the request of the third party, in respect of a debt or obligation of the company for which the director, beneficial owner or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.”.
 - Amendment of section 186

19. The Act is amended in section 186 by substituting for —

 - (a) paragraph (g) in subsection (1), the following new paragraph —

“(g) copies of all written communications to all beneficial owners, shareholders or all holders of the same class of shares during the last seven years, including —

 - (i) full names and residential addresses of natural persons identified as beneficial owners under 21 (2) (c) and supporting documents, and
 - (ii) annual reports made under section 212;”; and

(b) subsection (2), the following new subsection —

“(2) The references in paragraphs (b), (d), (e) and (g) of subsection (1) to seven years and the references in paragraphs (h) and (i) of that subsection to seven completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company:

Provided that records for a dissolved company, including beneficial owner information of the dissolved company shall be kept for 20 years or such period as may be prescribed under the Financial Intelligence Act.”.

20. The Act is amended in section 218 (1) by inserting immediately after the word “directors” appearing in paragraph (d), the words “and beneficial owners”.

Amendment
of section 218

21. The Act is amended by inserting immediately after section 329, the following new section —

Insertion of
section 329A

329A. (1) A nominee shareholder or director shall disclose the identity of their nominator to the Director for inclusion in the register.

“Disclosure
by nominee
shareholder
or director

(2) Where the nominator under subsection (1) changes, the nominee shareholder or director shall, within 10 working days, file a notice to that effect with the Registrar.

(3) The nominee shareholder or director shall, upon request by a competent authority, make information identifying their nominator available to the competent authority.

(4) A nominee shareholder or director who fails to comply with this section shall be guilty of an offence and liable to the penalty set out in section 493 (2).”.

22. The Act is amended in section 352 by substituting for subsection 5, the following new subsection —

Amendment
of section 352

“(5) On receipt of a notice from an authorised agent that the company has been dissolved the Registrar shall remove the name of the company from the register:

Provided that records, including beneficial owner information of the company shall be kept for 20 years or such period as may be prescribed under the Financial Intelligence Act.”.

23. The Act is amended in section 408 by substituting for the proviso thereto, the following new proviso —

Amendment
of section 408

“Provided that —

(a) the corporate state and corporate powers of the company shall, notwithstanding anything in its constitution, continue until it is dissolved; and

(b) records, including beneficial owner information of the company shall be kept for 20 years or such period as may be prescribed under the Financial Intelligence Act.”.

24. The Act is amended in section 461 by substituting for subsection (2), the following new subsection —

Amendment of
section 461

“(2) When any company has been wound up and is about to be dissolved, the books, papers and records of the company and of the liquidators shall, unless the court otherwise directs, be delivered to the Master; and such books, papers and records shall not be destroyed for a period of five years from the date of dissolution of the company:

Provided that such books, papers and records, including beneficial owner information of the company shall be kept for 20 years or such period as may be prescribed under the Financial Intelligence Act.

Amendment
of section 492

25. The Act is amended in section 492 by inserting the following new subsection immediately after subsection (4) —

“(5) The Registrar may —

(a) impose an administrative penalty not exceeding P500 000, where —

- (i) a person fails to notify the Registrar of a change in basic information of a registered company including beneficial owner, nominee shareholder or nominator information or other notification as may be provided for in this Act,
- (ii) a person falsifies basic information of a company including beneficial owner, nominee shareholder or nominator information,
- (iii) a person fails to provide basic information of a company including beneficial owner, nominee shareholding and nominator information, or
- (iv) the director who is resident in Botswana or the company secretary fails, upon request by a competent authority, including failure to submit audited financial statements for non-exempt companies or failure to adhere to any other reporting requirements in accordance with this Act;

(b) impose an administrative penalty not exceeding P250 000 where a director, secretary or an auditor of a company who has knowledge or who suspects another company of a suspicious conduct fails to report such suspicion to the relevant authority; or

(c) deregister a company, where the company, its directors, shareholders or auditor fails to pay administrative penalties within a prescribed period as directed by the Registrar:

Provided that —

- (i) the directors, shareholders or auditor of the company shall be prohibited from registering any other company under this Act, and
- (ii) the Registrar may, subject to section 341, restore the company to the register upon payment of the outstanding administrative fee and a restoration fee of P5 000.”

A.131

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

CHEMICAL WEAPONS (PROHIBITION) (AMENDMENT) ACT, 2022

No. 8



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 24:04
3. Amendment of section 14 of the Act

An Act to amend the Chemical Weapons (Prohibition) Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Chemical Weapons (Prohibition) (Amendment) Act, 2022.

Short title

2. Section 2 of the Chemical Weapons (Prohibition) Act (herein after referred to as “the Act”) is amended by deleting the definition of “proliferation financing”.

Amendment of section 2 of Cap. 24:04

3. The Act is amended by substituting for section 14, the following section —

Amendment of section 14 of the Act

Chemical
weapons

- “14. (1) Subject to this Act, a person shall not —
- (a) release scheduled chemicals;
 - (b) produce, develop, use, possess, acquire, develop, export, transport, stockpile or retain, or transfer, directly or indirectly to another person, a chemical weapon;
 - (c) construct, convert, maintain or use any premises or equipment for the production, development, retention, use or transfer of chemical weapons;
 - (d) assist another person to produce, develop, retain, use or transfer a chemical weapon either through assisting in the construction, conversion, maintenance or use of any premises or equipment;
 - (e) engage in preparations of a military nature to use a chemical weapon; or
 - (f) use a riot control agent as a method of warfare.

(2) A person who contravenes subsection (1) commits an act of terrorism and is liable to a penalty specified in section 3 (2) of the Counter Terrorism Act.

Cap. 08:08

A.134

(3) A person who finances any of the activities listed in subsection (1) commits an act of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter Terrorism Act.

(4) For the purposes of this section “act of terrorism” has the same meaning assigned to it under the Counter Terrorism Act.”.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

NUCLEAR WEAPONS (PROHIBITION) (AMENDMENT) ACT, 2022

No. 9



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 24:05
3. Amendment of section 5 of the Act

An Act to amend the Nuclear Weapons (Prohibition) Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Nuclear Weapons (Prohibition) (Amendment) Act, 2022.

Short title

2. Section 2 of the Nuclear Weapons (Prohibition) Act (herein after referred to as “the Act”) is amended by deleting the definition of “proliferation financing”

Amendment section 2 of Cap. 24:05

3. The Act is amended by substituting for section 5, the following section —

Amendment of section 5 of the Act

Nuclear Weapons and nuclear material

“5. (1) Subject to the exceptions for peaceful use of nuclear materials including nuclear energy, nuclear medicine and nuclear technology under the Radiation Protection Act, a person who —

Cap. 24:03

- (a) uses nuclear material;
- (b) receives the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly;
- (c) manufactures or otherwise acquires nuclear weapons or other nuclear explosive devices;
- (d) seeks or receives any assistance in the manufacture of nuclear weapons or other nuclear explosive devices;
- (e) diverts nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices;

A.136

Cap. 08:08

(f) constructs, acquires or retains any facility intended for the production of nuclear weapons or other nuclear explosive devices; or

(g) possesses, develops, exports, transports, transfers, stockpiles or uses any nuclear weapon or nuclear explosive device or its means of delivery,

commits an act of terrorism and is liable to a penalty specified in section 3 (2) of the Counter Terrorism Act.

(2) A person who finances any of the activities listed in subsection (1) commits an act of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter Terrorism Act.

(3) For the purposes of this section, “act of terrorism” has the same meaning assigned to it under the Counter Terrorism Act.”.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

**BIOLOGICAL AND TOXIN WEAPONS (PROHIBITION)
(AMENDMENT) ACT, 2022**

No. 10



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 24:06
3. Amendment of section 5 of the Act

An Act to amend the Biological and Toxins Weapon (Prohibition) Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Biological and Toxins Weapon (Prohibition) (Amendment) Act, 2022.

Short title

2. Section 2 of the Biological and Toxins Weapon (Prohibition) Act (herein after referred to as “the Act”) is amended by deleting the definition of “proliferation financing”.

Amendment of section 2 of Cap. 24:06

3. The Act is amended by substituting for section 5, the following section —

Amendment of section 5 of the Act

Prohibition of use of biological or toxin weapons

- 5. (1)** A person who —
- (a) intentionally releases biological agents or toxins;
 - (b) develops, produces, manufactures, otherwise acquires, stockpiles, stores, possesses, transports, imports, exports, transships, acts as a broker for, or retains any biological or toxin weapon, or transfers, directly or indirectly, to anyone, any biological or toxin weapon;
 - (c) uses any biological or toxin weapon;
 - (d) engages in preparations to use any biological or toxin weapon;
 - (e) constructs, acquires or retains any facility intended for the production of biological or toxin weapons;
 - (f) diverts any biological agent or toxin from peaceful uses to biological or toxin weapons;
 - (g) tampers with any facility, package or container containing any biological or toxin weapon in order to cause their release; or

A.138

Cap. 08:08

- (h) diverts or steals any biological or toxin weapon in order to cause their release,
commits an act of terrorism and is liable to a penalty specified in section 3 (2) of the Counter Terrorism Act.
- (2) A person who finances any of the activities listed in subsection (1) commits an act of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter Terrorism Act.
- (3) For the purposes of this section, “act of terrorism” has the same meaning assigned to it under the Counter Terrorism Act.”.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

COUNTER TERRORISM (AMENDMENT) ACT, 2022

No. 11



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. General Amendment of sections 15 to 21 of Cap. 08:08
3. Amendment of section 2 of the Act
4. Amendment of section 3 of the Act
5. Amendment of section 4 of the Act
6. Amendment of section 5 of the Act
7. Amendment of section 8 of the Act
8. Amendment of section 10 of the Act
9. Amendment of section 11 of the Act
10. Deletion of section 12 of the Act
11. Deletion of section 12A of the Act
12. Amendment of section 17 of the Act
13. Amendment of section 24 of the Act
14. Amendment of section 27 of the Act
15. Amendment of section 28 of the Act
16. Amendment of Part VII of the Act
17. Insertion of section 47 in the Act

An Act to amend the Counter Terrorism Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| <p>1. This Act may be cited as the Counter Terrorism (Amendment) Act, 2022.</p> | <p>Short title</p> |
| <p>2. The Counter Terrorism Act (herein after referred to as “the Act”) is amended by substituting for the words “Investigating Officer”, the words “Police Officer” wherever they appear in sections 15 to 21.</p> | <p>General Amendment of sections 15 to 21 of Cap. 08:08</p> |
| <p>3. Section 2 (1) of the Act is amended —</p> <p style="padding-left: 40px;">(a) by substituting for paragraph (g), the following paragraph — “(g) involves the proliferation of NBC weapons”;</p> | <p>Amendment of section 2 of the Act</p> |

A.140

- (b) by inserting in the correct alphabetical order, the following new definition —
“proliferation” means the use, manufacture, acquisition, possession, development, export, transshipment, brokering, transportation, transfer or stockpiling of NBC weapons and their means of delivery and related materials;
- (c) by substituting the following definitions —
(i) “Committee” means the National Coordinating Committee on financial intelligence established under the Financial Intelligence Act,
(ii) “funds” has the same meaning assigned to it under the Proceeds and Instrument of Crime Act, and
(iii) “property” has the same meaning assigned to it under the Proceeds and Instrument of Crime Act; and
- (d) by deleting the definition of “investigating officer”.
- 4.** Section 3 of the Act is amended in subsection 2 by substituting for paragraph (b) the following paragraph —
“(b) a fine of P10 000 000 or to a term of imprisonment for life, where the act does not result in death.”
- 5.** Section 4 of the Act is amended in subsection —
(a) (1) (b) by inserting immediately after the word “to” the words “a fine of P10 000 000 or to”;
(b) (2) by inserting immediately after the word “to” the words “a fine of P10 000 000 or to”; and
(c) (3) by inserting immediately after the word “to” the words “a fine of P10 000 000 or to”
- 6.** Section 5 of the Act is amended —
(a) in subsection (1) by inserting —
(i) the following new paragraph —
“(h) finances proliferation of NBC weapons”;
(ii) immediately after the word “offence”, the words “of financing of terrorism”; and
(b) in subsection (2), by inserting immediately after the word “offence”, the words “of financing of terrorism”; and
(c) in subsection (3), by inserting immediately after the word “offence”, the words “of financing of terrorism”.
- 7.** Section 8 of the Act is amended in subsection (1) by inserting immediately after the word “to” the words “a fine of P 5 000 000 or to”.
- 8.** Section 10 of the Act is amended in subsection (1) by inserting immediately after the word “to” the words “a fine of P5 000 000 or to”.
- 9.** Section 11 of the Act is amended in subsection (3) by inserting immediately after the word “to” the words “a fine of P5 000 000 or to”.
- 10.** The Act is amended by deleting section 12, of the Act.
- Amendment of section 3 of the Act
- Amendment of section 4 of the Act
- Amendment of section 5 of the Act
- Amendment of section 8 of the Act
- Amendment of section 10 of the Act
- Amendment of section 11 of the Act
Deletion of section 12 of the Act

11. The Act is amended by deleting section 12A, of the Act. Deletion of section 12A of the Act
12. Section 17 is amended by substituting for the word “funds” the word “property”. Amendment of section 17 of the Act
13. Section 24 of the Act is amended by inserting immediately after the word ‘to’ the words ‘a fine of P5 000 000 or to’. Amendment of section 24 of the Act
14. Section 27 (1) (a) is amended by substituting for the words ‘within closed doors’ the words ‘in camera’. Amendment of section 27 of the Act
15. Section 28 of the Act is amended by substituting for the definition of “examination officer” the following definition —
 “examination officer” means member of Botswana Police Service, member of Botswana Defence Force, an officer of the Directorate of Intelligence and Security, an immigration officer, and an officer of Botswana Unified Revenue Service authorised to implement revenue laws;”. Amendment of section 28 of the Act
16. The Act is amended by substituting for Part VII the following Part — Amendment of part VII of the Act
- “Part VII – Establishment of the Counter-Terrorism, Analysis and Fusion Division (ss 39-43)*
39. For the purposes of this Part — Interpretation of Part VII
- (a) “Division” means the Counter-Terrorism Analysis and Fusion Division of the Directorate, continued under section 40; and
- (b) “Directorate” means the Directorate of Intelligence and Security.
40. The Counter-Terrorism Analysis and Fusion Agency Established under the repealed Part VII is hereby continued as the Counter-Terrorism and Fusion Division of the Directorate. Establishment of Division
41. The Division shall be responsible for — Functions of Division
- (a) providing intelligence for the formulation of strategic operational plans for the civilian and military counter-terrorism efforts of the Botswana Government and for the effective integration of counter-terrorism intelligence and operations across investigating authorities;
- (b) developing strategies for combining terrorist travel intelligence operations and law enforcement planning and operations into a cohesive effort to intercept terrorists, find terrorist travel facilitators and constrain terrorist mobility;
- (c) having primary responsibility within Botswana for conducting net assessments of terrorist threats:
- Provided that the conduct of net assessments of terrorist threats by the Division shall not limit the powers of an investigating authority to conduct its own net assessments of terrorist threats;

- (d) conducting strategic operational planning for counter-terrorism activities and to assign roles and responsibilities to investigating authorities, as appropriate, but shall not direct the execution of any operations carried out by an investigating authority;
- (e) integrating all intelligence possessed or acquired by the Government pertaining to terrorism and counter-terrorism;
- (f) maintaining a comprehensive data base of terrorists and terrorist groups, and to serve as a central and shared knowledge bank on known and suspected terrorists and terrorist groups;
- (g) disseminating terrorism information, including current terrorism threat levels;
- (h) developing and implement a national approach to counter-terrorism within a broad regional and international strategy;
- (i) ensuring that the counter-terrorism programme recommendations and budget proposals of investigating authorities conform to the priorities established by the National Security Policy;
- (j) disseminating intelligence information on terrorism and counter-terrorism to the relevant national bodies;
- (k) ensuring that investigating authorities have access to and receive intelligence support needed to execute their counter-terrorism plans;
- (l) monitoring the implementation of strategic operational plans and obtain information from each investigating authority relevant for the monitoring of progress of such authority in implementing strategic operational plans;
- (m) coordinating the sharing of information amongst investigating authorities regarding investigations of terrorism cases to ensure effective response to counter-terrorism; and
- (n) supporting investigating authorities in the fulfilment of their responsibilities to disseminate terrorism intelligence or information.

Re-designation
of the Director
General of
Fusion Agency

42. The position of the Director General of the Counter-Terrorism Analysis and Fusion Agency, under the repealed Part VII, is hereby re-designated as Director under the Directorate, and the provisions of section 8 (4) of the Intelligence and Security Service Act shall apply to the Director.

Continuation
of staff of
Fusion Agency
as employees
of Directorate

43. (1) The Director and any person who was an officer or employee of the Agency or seconded to the Agency immediately before the coming into operation of this Act shall continue as Director, Officer, employee or secondee of the Directorate for the period for which, and subject to the conditions under which he or she was appointed as an officer in the Agency.

(2) Any enquiry or disciplinary proceedings which, before the coming into operation of this Act, were pending at Counter-Terrorism Analysis and Fusion Agency, under the repealed Part VII, shall be continued or enforced by or against the Directorate in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(3) Any decision or action taken or purported to have been taken or done by the Director General of the Counter-Terrorism Analysis and Fusion Agency, under the repealed Part VII, shall, in so far as it is not inconsistent with the provisions of the Intelligence and Security Service Act, be deemed to have been taken or done under by the Directorate.”

Cap. 23:02

17. The Act is amended by inserting immediately after section 46, the following new section —

Insertion of section 47 in the Act

“Savings provision

47. Notwithstanding the repeal of section 12A —
- (a) decisions of the National Counter Terrorism Committee are hereby saved and shall be deemed to be decisions of the National Coordinating Committee on Financial Intelligence;
 - (b) authority delegated by the Chairperson of National Counter Terrorism Committee shall be deemed to have been delegated by the Chairperson of National Coordinating Committee on Financial Intelligence;
 - (c) authority delegated by the Chairperson of National Counter Terrorism Committee to the Director General of the Counter-Terrorism Analysis and Fusion Agency shall be deemed to have been delegated to the Director General of the Directorate of Intelligence and Security; and
 - (d) guidelines issued by the National Counter Terrorism Committee shall be deemed to have been issued by the National Coordinating Committee on Financial Intelligence.”

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

**PROCEEDS AND INSTRUMENTS OF CRIME
(AMENDMENT) ACT, 2022**

No. 12



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 08:03
3. Amendment of section 20 of the Act
4. Amendment of section 30 of the Act
5. Insertion of section 46A. in the Act

An Act to Amend the Proceeds and Instruments of Crime Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Proceeds and Instruments of Crime (Amendment) Act, 2022.

Short title

2. Section 2 of the Proceeds and Instruments of Crime Act (hereinafter referred to as “the Act”) is amended in by —

Amendment of section 2 of Cap. 08:03

(a) by substituting the following definitions —

- (i) “funds” means assets of any kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or virtual, evidencing title to, or interest in such assets;
- (ii) “prescribed investigator” means a police officer, a Botswana Unified Revenue Service officer authorised to implement revenue laws, a person authorised to conduct an inquiry or investigation under section 7 of the Corruption and Economic Crimes Act or other class of persons as may be prescribed”;
- (iii) “property” means money or any other movable, immovable, corporeal, or unincorporeal thing whether located in Botswana or elsewhere and includes a virtual asset, any rights securities and any interest in privileges and claims over that thing as well as —

Cap. 08:05

- (aa) any currency, whether or not the currency is legal tender in Botswana, and any bill, security, bond, negotiable instrument or any instrument capable of being negotiated which is payable to bearer or endorsed payable to bearer, whether expressed in Botswana currency or otherwise;
- (bb) any balance held in Botswana currency or in any other currency in accounts with any bank which carries on business in Botswana or elsewhere;
- (cc) any balance held in Botswana currency or in any other currency in accounts with a bank which carries on business in Botswana;
- (dd) any balance held in any currency with a bank outside Botswana;
- (ee) motor vehicles, ships, aircraft, boats, works of art, jewellery, precious metals or any other item of value;
- (ff) any right or interest in property;
- (gg) virtual assets; and
- (hh) funds or other assets including all property and any interest, dividends or income on or value accruing or generated by such funds or assets; and

(b) by inserting the following new definition —

“virtual asset” has the same meaning assigned to it under the Virtual Assets Act.

Act No. 3 of 2022

Amendment of section 20 of the Act

3. The Act is amended at section 20 (2) by substituting for paragraph (c) the following paragraph —

“(c) specify that property which is to be substituted for the property referred to in paragraph (a) is —

- (i) property in which the person had an interest at the time that the confiscation offence or a serious crime related activity was committed or an order under this Act was made, and
- (ii) property of corresponding value as the property referred to in paragraph (a) and (b).”.

Amendment of section 30 of the Act

4. The Act is amended at section 30 by substituting for subsection (3) the following subsection —

“(3) For purposes of this Part, any cash which is the subject of —

- (a) false import or export declaration; or
- (b) non-declaration,

under the Customs Act shall be deemed to be an instrument.”.

Insertion of section 46A. in the Act

5. The Act is amended by inserting immediately after section 46, the following new section —

“Control and possession of property of nationally listed or designated person
46A. (1) Any person other than a specified party or accountable institution, having possession of —

- (a) property or economic resources that are wholly or jointly owned, held or controlled directly or indirectly, by a nationally listed person, entity or structured group or by a designated person or entity, including property or economic resources that cannot be tied to a particular act of terrorism, plot or threat;

- (b) property or economic resources that are wholly or jointly owned or held by a person or an entity —
 - (i) acting on behalf of , or at the direction of, a nationally listed person, entity or structured group, or
 - (ii) controlled by designated person or entity; or
- (c) property or economic resources derived from or generated by property or economic resources referred, to in paragraphs (a) or (b),

shall, without delay, give control and possession thereof to the Receiver.

(2) The Receiver shall record full particulars of property or economic resources referred to in subsection (1) against the name of the owners and beneficial owners for proper management.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P1 000 000 or to imprisonment to a term not exceeding 10 years or to both.

(4) For the purposes this section, the following words have the same meaning assigned under the Financial Intelligence Act — Cap. 08:07

- (a) “accountable institution”;
- (b) “beneficial owner”;
- (c) “designated person”;
- (d) “nationally listed person”; and
- (e) “specified party”.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

CRIMINAL PROCEDURE AND EVIDENCE (AMENDMENT) ACT, 2022

No. 13



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 08:02
3. Amendment of section 3 of the Act

An Act to amend the Criminal Procedure and Evidence Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
| <p>1. This Act may be cited as the Criminal Procedure and Evidence (Amendment) Act, 2022.</p> | Short title |
| <p>2. Section 2 of the Criminal Procedure and Evidence Act (hereinafter referred to as “the Act”) is amended by inserting the following new subsection —</p> <p>“(2) An investigating authority shall expeditiously identify, trace and initiate the freezing and seizing of a proceed or instrument of crime.</p> | Amendment section 2 of Cap. 08:02 |
| <p>3. The Act is amended at section 3 by inserting in the correct alphabetical order, the following new definitions —</p> <p>(a) ““proceed” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act; and</p> <p>(b) “instrument” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;”.</p> | Amendment of section 3 of the Act |

A.150

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

**CRIMINAL PROCEDURE AND EVIDENCE (CONTROLLED
INVESTIGATIONS) ACT, 2022**

No. 14



of 2022

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation
3. Application
4. Jurisdiction

PART II — *Undercover Operations*

5. Prohibition of undercover operation without warrant
6. Application for undercover operation warrant
7. Determination of undercover operation warrant
8. Protection of privacy in controlled investigations
9. Application for assumed identity
10. Authorisation for assumed identity
11. Issuance of assumed identity
12. Variation and cancellation of authority
13. Annual review of issued authorities
14. Establishment of Controlled Investigations Coordination Committee
15. Non-disclosure of identity in legal proceedings
16. Entries in the registers
17. Cancellation of authority in registers
18. Prohibition of disclosure of identity
19. Misuse of assumed identity

PART III — *Interception of Communications*

20. Prohibition of interception of communications without a warrant
21. Application for interception warrant
22. Control of interception
23. Determination for interception warrant
24. Issuance of interception warrant

25. Evidence obtained in excess of authorisation or warrant
26. Notice of disclosure of protected information
27. Restriction on disclosure of communication or information
28. Duties and responsibilities of service providers

PART IV — *Handling of Information from Controlled Investigations*

29. Handling of information
30. Retention and storage of information
31. Retention of electronic record

PART V — *Admissibility of Evidence*

32. Legally obtained information
33. Evidence relating to carrying out of controlled investigation
34. Admissibility of evidence from foreign State
35. Inadmissible evidence

PART VI — *Miscellaneous Provisions*

36. Legal indemnity
37. Offences and penalties
38. Administrative sanctions and compensations
39. Regulations
40. Savings and transitional provisions

SCHEDULE

An Act to provide for the authorisation of investigations for purposes of controlled investigations and the gathering of criminal evidence within and outside Botswana and to provide for any other related matters.

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

PART I — *Preliminary (ss 1-4)*

Short title and commencement

1. This Act may be cited as the Criminal Procedure and Evidence (Controlled Investigations) Act, 2022, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —
“applicant” means a law enforcement officer in an investigatory authority who applies for a warrant or an order under this Act;
“Authority” means the Communications Regulatory Authority;

- “Chairperson” means a chairperson appointed in terms of paragraph 4 of the Schedule;
- “Committee” means a Committee established under section 14;
- “communication service” has the same meaning assigned to it under the Communications Regulatory Authority Act;
- “comparable body” means an institution or government agency outside Botswana with functions similar to those of an investigatory authority;
- “controlled delivery” means the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, —
- (a) with the knowledge and under the supervision of their competent authorities; and
 - (b) for the purpose of the—
 - (i) investigation of an offence, and
 - (ii) identification of persons involved in the commission of the offence;
- “controlled investigation” includes —
- (a) undercover operations;
 - (b) covert operations;
 - (c) use of informants;
 - (d) controlled delivery; and
 - (e) interception of communications;
- “court” or “the court” means the High Court;
- “informant” means a person who provides useful and credible information regarding criminal activity or a matter of interest to an investigatory authority, and includes —
- (a) a member of the public;
 - (b) the victim of a crime;
 - (c) a member of an organised criminal group; and
 - (d) an investigating officer;
- “intercept” means aural or other acquisition of the contents of any communication through the use of any means, including an interception device, so as to make the contents of a communication available to a person other than the sender or the recipient or intended recipient of that communication, and includes the —
- (a) monitoring of communication by means of a monitoring device;
 - (b) viewing, examination or inspection of the contents of any communication; and
 - (c) diversion of any communication from its intended destination to any other destination;
- “interception interface” means the physical location within the service provider’s telecommunications facilities where access to the intercepted communication or call-related information is provided;

A.154

- “interception subject” means the person whose communications are to be or are being intercepted;
- “investigating officer” means an investigator in an investigatory authority;
- Cap. 08:07 “investigatory authority” has the same meaning assigned to it under the Financial Intelligence Act;
- “judicial officer” means a judge of the High Court;
- “key” means a numeric code or other means by which information is encrypted;
- Cap. 08:03 “serious crime related activity” has the same meaning assigned to it under the Proceeds and Instruments of Crime Act;
- “service provider” has the same meaning assigned to it under the Communications Regulatory Authority Act; and
- “target” means a person, place, vehicle, receptacle or anything in respect of which a controlled investigation has been authorised.
- Application
Jurisdiction **3.** This Act binds the State.
- 4.** (1) The courts of Botswana shall have jurisdiction where an act done or an omission made constituting an offence under this Act has been committed —
- (a) in the territory of Botswana;
 - (b) by a national of Botswana outside the territory of Botswana, if the person’s conduct constitutes an offence under the law of the country where the offence was committed and if the person has not been prosecuted for the offence in that country;
 - (c) on a ship or aircraft registered in Botswana;
 - (d) in part in Botswana; or
 - (e) outside the territory of Botswana and where any result of the offence has an effect in Botswana.

PART II — Undercover Operations (ss 5-19)

- Prohibition of
undercover
operation
without
warrant **5.** (1) An investigating officer shall not engage in an undercover operation unless the investigating officer is authorised to do so by an undercover warrant issued under this Part.
- (2) A person who engages in an undercover operation without authorisation commits an offence.
- Application
for undercover
operation
warrant **6.** (1) An investigating officer shall make an *ex parte* application to the court for an undercover operation warrant for purposes of gathering evidence in a controlled investigation.
- (2) An *ex parte* application under subsection (1) shall be heard in camera.
- (3) A warrant issued under subsection (1) shall be in writing and specify —
- (a) the date and time of the signing and the time from which the approval takes effect;

- (b) the persons who are authorised to participate in the operations;
- (c) the nature of the conduct in which the participants are authorised to engage, including —
 - (i) covert operations;
 - (ii) use of informants; and
 - (iii) controlled delivery;
- (d) the jurisdiction where the warrant is enforceable; and
- (e) a period, not exceeding three months, for which the approval is given.

7. (1) A court may grant an application to carry out an undercover operation for the purposes of gathering evidence of serious crime related activities where the court is satisfied that —

- (a) a person has engaged, is engaging or is about to engage in serious crime related activities of the kind to which the proposed undercover operation relates;
- (b) the proposed undercover operation is not more extensive than could reasonably be justified in view of the nature and extent of the suspected serious crime related activity;
- (c) the means are proportionate to the proposed undercover operation and are justified by the social harm of the serious crime related activity against which they are directed;
- (d) the undercover operation is sufficiently designed to provide a person who has engaged, or is engaging or is about to engage in serious crime related activity an opportunity —
 - (i) to manifest that behaviour, or
 - (ii) to provide additional evidence of that behaviour,

without undue risk that persons without a predisposition to a serious crime related activity will be encouraged into the serious crime related activity that they would otherwise have avoided.

(2) In determining an application for an undercover operation, a court shall consider whether approval for similar operations has previously been sought, and, if sought and refused, the reasons for that refusal.

(3) The court may renew, from time to time, a warrant for a period not exceeding 12 months.

8. (1) In determining an application for an undercover operation, a court shall consider —

- (a) whether what is sought to be achieved by the warrant could not reasonably be achieved by other less intrusive means;
- (b) whether the level of protection to be applied in relation to any obtaining of information by virtue of the warrant is higher because of the particular sensitivity of that information; and
- (c) any other aspects of the public interest in the protection of privacy.

(2) The other considerations by the court under subsection (1) may include —

- (a) national security interests;

Determination
of undercover
operation
warrant

Protection
of privacy
in controlled
investigations

Application for
assumed
identity

- (b) public interest in preventing or detecting serious crime related activity;
- (c) whether the conduct authorised is proportionate; or
- (d) any other consideration that the court may consider relevant for purposes of this Act.

9. (1) An applicant may apply to the court for authority to acquire an assumed identity for an undercover operation.

(2) An assumed identity application under subsection (1) shall —

- (a) be an *ex parte* application;
- (b) be in a sealed envelope marked classified; and
- (c) contain —
 - (i) the name of the applicant,
 - (ii) where the application is not made by the applicant, the name of the person to be authorised to acquire an assumed identity,
 - (iii) if the authorised person is not a law enforcement officer, the name and position of an investigating officer to be appointed as a supervisor of the authorised person during an undercover operation,
 - (iv) the reason for the assumed identity,
 - (v) details of the investigation or intelligence gathering exercise in respect of which the assumed identity will be used, and
 - (vi) details of the investigatory authority and the type of evidence to be gathered.

(3) In any application received in terms of subsection (2), the Registrar shall ensure that the application remains under seal and that the disclosure of any information in relation to the application shall be made only to the —

- (a) relevant officers directly concerned with the proceedings of the application;
- (b) judge allocated or judges empaneled to hear the application; and
- (c) parties to the application.

(4) If, in proceedings before a court, the identity of a person in respect of whom an authority is, or was in force, is in issue or may be disclosed, the court shall unless it considers that the interests of justice otherwise require —

- (a) ensure that such parts of the proceedings as relate to the identity of the person are held in camera; and
- (b) make such orders as to the suppression of evidence given before it as will ensure that the identity of the person is not disclosed.

(5) The court may, for purposes of subsection (1) —

- (a) allow a person in respect of whom an authority is, or was in force, to appear before it under the assumed name or under a code name or code number; and

- (b) make orders prohibiting the publication of any information, including information derived from evidence given before it, that identifies, or might facilitate the identification of any person who has been, or is proposed to be, called to give evidence.

10. (1) The court may, on receipt of an application under section 9, issue the applicant with an authority to acquire an assumed identity where the court is satisfied that —

Authorisation
for assumed
identity

- (a) the assumed identity is necessary for purposes of an investigation or intelligence gathering in relation to a serious crime related activity; and
(b) the risk of abuse of the assumed identity by the authorised person is minimal.

(2) An investigating officer appointed as supervisor under section 9 (2) (c) shall hold a designation as may be prescribed.

(3) A person shall apply for a separate authority for each assumed identity.

11. (1) Where a court issues an authority to acquire an assumed identity under section 10 (1), such authority shall be in writing.

Issuance of
assumed
identity

- (2) The authority under subsection (1) shall specify —
(a) the particulars of the person issuing the authority;
(b) the date on which the authority comes into effect;
(c) details of the assumed identity authorised;
(d) details of the evidence to be acquired under the authority;
(e) the conditions to which the authority is subject;
(f) the reason why the authority is granted;
(g) where the authority relates to an applicant, the name of the applicant;
(h) where the authority relates to an authorised civilian —
(i) the name of the authorised civilian,
(ii) the name of his or her supervisor, and
(iii) a period which may not exceed three months;
(i) whether it authorises an application for an order for —
(i) an entry in the register of births and deaths,
(ii) an entry in the register of marriages,
(iii) the issuance of a travel document, or
(iv) an entry in a corresponding law; and
(j) the participating jurisdictions in which the assumed identity may be used.

12. (1) An applicant may make an application to a court to vary or cancel an authority.

Variation and
cancellation of
authority

- (2) Subject to subsection (1), the court —
(a) may vary or cancel the authority; and
(b) shall cancel the authority if satisfied, on a review or otherwise, that the grounds for the granting of the authority no longer exist.

(3) The court shall give written notice of the variation or cancellation under this section to —

- (a) the applicant; and
(b) if the authorised person is an authorised civilian, the authorised person's supervisor.

- (4) The notice under subsection (3) shall specify the reason for the variation or cancellation.
- (5) A variation or cancellation under this section shall take effect on —
- (a) the day the written notice is given to the authorised person; or
 - (b) a specified day in the notice.
- 13.** (1) The court shall, at least once in every 12 months' period, review each authority granted under this Part.
- (2) Where upon review under subsection (1), the court is satisfied that the grounds for the granting of the authority still exist, the court shall —
- (a) record its opinion and its reasons, in writing; and
 - (b) extend the authority.
- 14.** (1) There is hereby established a Controlled Investigations Coordination Committee.
- (2) The composition, functions and powers of the Committee shall be as set out in the Schedule.
- 15.** (1) If, in proceedings before a court, the identity of a person in respect of whom an authority is, or was in force, is in issue or may be disclosed, the court shall, unless it considers that the interests of justice otherwise require —
- (a) ensure that such parts of the proceedings as relate to the identity of the person are held in camera; and
 - (b) make such orders as to the suppression of evidence given before it as, in its opinion, will ensure that the identity of the person is not disclosed.
- (2) The court may, for purposes of subsection (1) —
- (a) allow a person in respect of whom an authority is, or was in force, to appear before it under the assumed name or under a code name or code number; and
 - (b) make orders prohibiting the publication of any information, including information derived from evidence given before it, that identifies, or might facilitate the identification of, any person who has been or is proposed to be called to give evidence.
- 16.** (1) In issuing an applicant with an authority to acquire an assumed identity under section 11, the court may authorise the following —
- (a) an order for an entry in the register of births and deaths in terms of section 4 of the Births and Death Registration Act;
 - (b) an order for an entry in the national register in terms of the National Registration Act;
 - (c) an order for the entry in the register of marriages in terms of section 28 of the Marriage Act;
 - (d) an order for the issuance of a travel document in terms of the Immigration Act; and
 - (e) the use of an assumed identity in a participating jurisdiction in which the assumed identity may be used.

Annual review of issued authorities

Establishment of Controlled Investigations Coordination Committee

Non-disclosure of identity in legal proceedings

Entries in the registers

Cap. 30:01

Cap. 01:02

Cap. 29:01

Cap. 25:02

- (2) Subject to section 11, where the court grants an authority it shall order —
- (a) the Registrar of Births and Deaths to make an entry in the register under the Births and Deaths Registration Act;
 - (b) the Registrar of National Registration to make an entry in the register under the National Registration Act;
 - (c) the Registrar of Marriages to make an entry in the marriage register under the Marriage Act; and
 - (d) the Director of Immigration to issue a travel document under the Immigration Act, in relation to the acquisition of an assumed identity under an investigatory authority or comparable body.
- (3) The court may make an order under this section —
- (a) on application by an applicant; and
 - (b) where it is satisfied that the order is justified, having regard to the nature of the activities undertaken or to be undertaken by the applicant or person under an investigatory authority or comparable body.
- (4) The Registrar of Births and Deaths, the Register of National Registration, the Registrar of Marriages and the Director of Immigration shall give effect to an order under this section —
- (a) within the period specified in the order; or
 - (b) if no period is specified in the order, within 14 days after the day on which the order is made.
- 17.** (1) This section shall apply if —
- (a) the court cancels an authority for an assumed identity; and
 - (b) there is an entry in relation to that identity —
 - (i) in the register under the Births and Deaths Act, in the register under the National Registration Act, in the register under the Marriages Act or in a travel document issued under the Immigration Act as a consequence of an order under section 16, or
 - (ii) in a register of births, deaths, national registration, marriages or the issuance of a travel document in a participating jurisdiction as a consequence of an order under the corresponding law of the jurisdiction.
- (2) Where subsection (1) (b) (i) applies —
- (a) an applicant shall, within 28 days after the day on which the authority is cancelled, apply to the court for an order that the Registrar of Births, and Deaths, Registrar of National Registration, the Registrar of Marriages or the Director of Immigration cancel the entry; and
 - (b) the Registrar of Births and Deaths, Registrar of National Registration, Registrar of Marriages or the Director of Immigration shall give effect to the order within 28 days after the day on which the order is made.

Cancellation
of authority in
registers

A.160

- Prohibition of disclosure of identity
- (3) Where subsection (1) (b) (ii) applies, the applicant shall apply for an order under the corresponding law to cancel the authority.
- 18.** Notwithstanding the provisions of section 15, a person who discloses the identity of another person which he or she obtained or to which he or she has had access by virtue of —
- (a) the performance of his or her duties or functions under this Act; or
 - (b) his or her position as a person who holds or has held office in the investigatory authority, and from which the identity of a person who —
 - (i) is or was a confidential source of information to the investigatory authority, or
 - (ii) is or was an officer or support staff engaged in undercover operational activities of an investigatory authority,
- and who discloses such information to a person other than a person to whom he or she is authorised to disclose the information to or to whom it may lawfully be disclosed, commits an offence and is liable to a fine not exceeding P50 000 or a term of imprisonment not exceeding 12 years.
- Misuse of assumed identity
- 19.** An investigating officer who —
- (a) intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by his or her authority; and
 - (b) knows that, or is reckless as to whether, the acquisition or use is not —
 - (i) in accordance with his or her authority, or
 - (ii) in the course of duty,
- commits an offence and is liable to a term of imprisonment for life.

PART III — *Interception of Communications (ss 20-28)*

- Prohibition of interception communications without a warrant
- 20.** (1) An investigating officer shall not intercept communications unless the investigating officer is authorised to do so by an interception warrant issued under this Part.
- (2) A person who intercepts communication without a warrant commits an offence.
- Application for interception warrant
- 21.** (1) An applicant shall make an *ex parte* application to the court for an interception warrant for purposes of gathering evidence in a controlled investigation.
- (2) An application under subsection (1) shall contain the following information —
- (a) the person whose communication is intercepted;
 - (b) the basis for believing that communication relating to the ground on which the application is made will be obtained through the interception;
 - (c) the service provider to whom the direction to intercept the communication shall be addressed, where applicable;
 - (d) the nature and location of the place from which the communication is to be intercepted;

- (e) full particulars of all the facts and circumstances alleged by the applicant in support of his or her application;
- (f) whether other investigative procedures have been applied and have failed to produce the required evidence;
- (g) whether other investigative procedures involve undue risk to the safety of members of the public or to those wishing to obtain the required evidence; and
- (h) the period for which the authorisation is required to be issued.

22. (1) A person shall not intercept communication in the course of its transmission —

Control of interception

- (a) by means of a telecommunication system or radio communication system, unless the person —
 - (i) is a party to the communication,
 - (ii) has the consent of the parties to the communication, or
 - (iii) is authorised by warrant, and
- (b) through the post, unless the person —
 - (i) has the consent of the person to whom, or the person by whom, the communication is sent, or
 - (ii) is authorised by warrant.

(2) Subsection (1) shall not apply to the *bona fide* interception of a communication for the purpose of or in connection with the provision, installation, maintenance or repair of a postal, telecommunication or radio communication service.

(3) Subject to subsections (1) and (2), a person who intentionally intercepts or attempts to intercept, or authorises or procures another person to intercept or attempt to intercept, at any place, communication in the course of its occurrence or transmission commits an offence and is liable to a fine not exceeding P50 000 or to a term of imprisonment not exceeding 12 years, or to both.

23. (1) The court shall grant an application to carry out an interception of communication warrant for purposes of gathering evidence of a serious crime related activity where the court is satisfied that there are reasonable grounds to believe that material information relating to —

Determination for interception warrant

- (a) the commission of an offence; or
 - (b) the whereabouts of a person suspected to have committed an offence, is contained in the communication.
- (2) Section 15 shall, with the necessary modifications, apply to this Part.
- (3) A court may approve a warrant under subsection (1) and may —
- (a) require a communication service provider to intercept and retain specified communication of a specified description received or transmitted, or about to be received or transmitted by that communication service provider; or
 - (b) authorise an investigating officer to enter a premises and to install on such premises, a device for the interception and retention of a specified communication or other communication of a specified description, and to remove and retain such device.

A.162

Issuance of interception warrant

24. (1) The court may grant a warrant to carry out an interception of communications for purposes of gathering evidence of serious crime related activities where the court is satisfied that —

- (a) a serious crime related activity is being or will probably be committed;
- (b) the gathering of information concerning an actual threat to national security or to compelling national economic interest is necessary; or
- (c) the gathering of information concerning a potential threat to public safety or national security is necessary.

(2) A warrant granted under subsection (1), —

- (a) shall be valid for such period not exceeding three months and may be renewed for a period not exceeding three months;
- (b) shall specify the name and address of the interception subject and the manner of interception;
- (c) may order the service provider to comply with such technical requirements as may be specified by the court to facilitate the interception;
- (d) shall specify the apparatus and other means that are to be used for identifying the communication that is to be intercepted; and
- (e) shall contain any other necessary details relating to the interception target.

(3) The court may, if it is of the opinion that the circumstances so require, amend or revoke the authorisation at any time.

Evidence obtained in excess of authorisation or warrant

25. (1) Any evidence obtained by means of an interception made in excess of an authorisation issued under Part II or warrant issued under this Part shall be admissible in evidence, in criminal proceedings, only with the leave of the court.

(2) The court in granting or refusing a leave under subsection (1), shall have regard to —

- (a) the circumstances in which the evidence was obtained;
- (b) the potential effect of the evidence admission or exclusion on issues of national security; and
- (c) the unfairness to the accused that may be occasioned by the evidence admission or exclusion.

Notice of disclosure of protected information

26. (1) Where an applicant has reasonable grounds —

- (a) that a key to protected information is in the possession of a person;
- (b) that the imposition of a disclosure requirement in respect of protected information is necessary —
 - (i) in the interests of national security,
 - (ii) for the purpose of preventing and detecting a serious crime related activity, or
 - (iii) in the public interest; and
- (c) that the imposition of a disclosure requirement referred to in paragraph (b) is proportionate to what the imposition seeks to achieve; and

- (d) that it is not reasonably practicable for the applicant to obtain possession of protected information in an intelligible form without giving of notice under this section, the applicant may, by notice to the person whom he or she believes to have possession of the key, impose a disclosure requirement in respect of the protected information.
- (2) A notice under this section imposing a disclosure requirement in respect of protected information shall —
- (a) be in writing;
 - (b) describe the protected information to which the notice relates;
 - (c) specify why the protected information is required;
 - (d) specify the duration of the notice; and
 - (e) set out the disclosure that is required by the notice and the form and manner in which it is to be made.
- (3) A notice under this section shall not require disclosure to a person other than —
- (a) the person giving the notice; or
 - (b) such other person as may be specified in the notice.
- (4) A person to whom a notice has been given in terms of this section and who is in possession of both the protected information and the key thereto shall —
- (a) use the key in his or her possession to provide access to the information; and
 - (b) in providing access to such information, make a disclosure of the information.
- (5) Where a person to whom the notice has been given under this section is in possession of different keys, or a combination of keys, to protected information —
- (a) it shall not be necessary for purposes of complying with the notice for the person given notice, to disclose keys in addition to those the disclosure of which alone, are sufficient to enable the applicant to obtain access to the protected information and to put it in an intelligible form; and
 - (b) the person given notice may select which of the keys or combination of keys, may be used for complying with the notice.
- (6) Where a person to whom a notice has been given under this section —
- (a) no longer possesses a key to the protected information; and
 - (b) has information that will facilitate the obtaining or discovery of the key to protected information,
- he or she shall disclose this, as soon as practicably possible, to the applicant.
- (7) The applicant to whom a key has been disclosed under this section shall —
- (a) use the key only in respect of the protected information, and in the manner and for the purposes specified in the notice; and

Restriction on disclosure of communication or information

- (b) on or before the expiry of the period or extended period for which the notice has been issued, destroy all records of the disclosed key if, in the opinion of the applicant —
 - (i) criminal proceedings or civil proceedings are not being instituted in connection with such records, or
 - (ii) such records will not be required for criminal or civil proceedings.
- (8) A person who fails to make a disclosure required by the notice issued under this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a period not exceeding six years, or to both.

27. (1) A person shall not disclose communication or information which he or she obtained in the exercise of his or her powers or the performance of his or her duties in terms of this Act unless he or she is required to do so in terms of any written law or by an order of the court.
(2) Notwithstanding subsection (1), a person may disclose communication or information he or she obtained in the exercise of his or her powers or the performance of his or her duties in terms of this Act, —

- (a) to another person who of necessity requires it for the like exercise or performance of his or her functions in terms of this Act; or
 - (b) information which is required to be disclosed as evidence in court.
- (3) A person who discloses communication or information in contravention of subsection (1) commits an offence and is liable to a fine of not exceeding P50 000 or to imprisonment for a period not exceeding 12 years, or to both.

Duties and Responsibilities of service providers

- 28.** (1) A service provider shall —
- (a) have postal or telecommunications systems which are technically capable of supporting lawful interceptions at all times in accordance with sections 20 and 22;
 - (b) install hardware and software facilities and devices which enable the interception of communications at all times or when so required, as the case may be;
 - (c) have services which are capable of rendering real time and full time monitoring facilities for the interception of communications;
 - (d) provide all call-related information in real-time or as soon as possible upon call termination;
 - (e) provide one or more interception interfaces from which the intercepted communication shall be transmitted to the investigatory authority;
 - (f) transmit intercepted communications to the investigatory through fixed or switched connections, as may be specified by the court;
 - (g) provide access to all interception subjects operating temporarily or permanently within their communications systems, and where the interception subject may be using features to divert calls to other service providers or terminal equipment, access to such other providers or equipment;

- (h) provide, where necessary, the capacity to implement a number of simultaneous interceptions in order to —
- (i) allow monitoring by more than one authorised person, and
 - (ii) safeguard the identities of applicants and ensure the confidentiality of the investigations; and
- (i) implement all interceptions in such a manner that neither the interception target nor another applicant is aware of any changes made to fulfil the warrant.

(2) A service provider who fails to give assistance in terms of this section commits an offence and is liable to a fine not exceeding P50 000 and each director also commits an offence and is liable to imprisonment for a period not exceeding 10 years unless the director establishes that he or she took reasonable precautions and exercised due diligence to avoid the commission of the offence.

(3) The Authority may revoke the licence of a services provider or protected information key holder who discloses information in contravention of subsection (1).

PART IV — *Handling of Information from Controlled Investigations*
(ss 29-31)

29. The head of an investigatory authority shall ensure that reasonable care is taken to protect and preserve information where evidence gathered from a controlled investigation is sufficient for analysis in a controlled investigation.

Handling of
information

30. (1) The head of an investigatory authority shall retain information obtained through controlled investigations as may be prescribed.

Retention and
storage of
information

(2) The court may, on application by an applicant, order that information obtained from the carrying out of a controlled investigation in respect of a serious crime related activity shall be retained, if the court is satisfied that there are reasonable grounds to believe that —

- (a) the information obtained from the analysis of the controlled investigation is likely to produce evidence of probative value in relation to an offence; and
- (b) during the controlled investigation there may be information that may lead to a conviction.

(3) A court order granted under this section shall state the period for which the information obtained may be retained.

31. (1) A recording made on audiotape, videotape, electronic or other means by an applicant acting in terms of this Act, that is not required for investigative or evidentiary purposes, may be retained for such purpose and period as the Minister may direct.

Retention of
electronic
record

(2) The Minister shall prescribe the manner and time frame for the retention of the matter referred to in subsection (1).

PART V — *Admissibility of Evidence (ss 32-35)*

Legally obtained information

32. Any evidence obtained through a controlled investigation carried out in accordance with this Act shall be admissible as evidence in court.

Evidence relating to carrying out of controlled investigation

33. Any evidence relating to the details as to how a controlled investigation was carried out shall be admissible in court —

- (a) to establish or rebut an allegation that unreasonable force was used during the carrying out of the controlled investigations; or
- (b) to decide the admissibility of a confession or admission, or other evidence averse to the suspect if the suspect alleges that the evidence was induced or obtained by the use of unreasonable force.

Admissibility of evidence from foreign State

34. Information contained in a communication retained in a foreign State in accordance with the law of that foreign State and certified by a judicial officer of that foreign State to have been so intercepted and retained, shall be admissible as evidence in proceedings for an offence under this Act.

Inadmissible evidence

35. (1) Any evidence not obtained in terms of this Part, shall not be admissible as evidence in court.

(2) Notwithstanding subsection (1), the court may consider the following in deciding whether to admit any evidence —

- (a) the probative value of the evidence, including whether evidence of equivalent probative value could have been obtained by other means; and
- (b) all relevant factors which, in the opinion of the court, are necessary for arriving at such a decision.

PART VI — *Miscellaneous Provisions (ss 36-40)*

Legal indemnity

36. An action shall not be brought against any member of staff of an investigatory authority or any other officer (or any other person authorised by the court to perform any act under this Act), in respect of anything done while taking part in the authorised conduct granted in terms of this Act.

Offences and penalties

37. (1) A person who delays, interferes with or wilfully obstructs an applicant in the exercise of the powers conferred under this Act, commits an offence and is liable to a fine not exceeding P10 000 or to a term of imprisonment for a period not exceeding 12 years, or to both.

(2) A person who contravenes an authorisation or warrant issued under this Act commits an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding 15 years, or to both.

Administrative sanctions and compensations

38. The Committee may impose an administrative penalty or award of compensation not exceeding P500 000 for purposes of paragraph 1 (2) in the Schedule.

39. (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.

Regulations

(2) Without prejudice to the generality of subsection (1), regulations may provide for —

- (a) reporting obligations of an investigatory authority;
- (b) measures to ensure the security of information disclosed by or to the investigatory authority; and
- (c) the manner and form an investigatory authority is to keep records required under this Act.
- (d) the form and manner for applications made in terms of this Act; and
- (e) procedure, manner and form for complaints and award of compensation made in terms of the Schedule.

40. (1) A warrant or authorisation issued for a controlled investigation before the commencement of this Act shall, in so far as it is not inconsistent with this Act, continue to be effective as if issued under this Act.

Savings and transitional provisions

(2) Information or material obtained from the undercover operations or interception of communication before the commencement of this Act by means of a warrant or an authorisation issued in other relevant Acts, may be retained or used for —

- (a) investigative purposes;
- (b) evidentiary purposes; or
- (c) any other legal purposes,

notwithstanding that the retention or use of the information or material from such undercover operations or interception of communication would, if obtained after the commencement of this Act, constitute a breach of this Act.

(3) Any lawful act done before the commencement of this Act, that falls within this Act shall, in so far as it is not inconsistent with this Act, continue to be applicable as if done under this Act.

(4) The Minister may, by Order published in the *Gazette* —

- (a) pending the appointment of the Committee, make such transitional arrangements as may be necessary for purposes of the discharge of the functions of the Committee; and
- (b) make such transitional arrangements as may be necessary for the purposes of the provisions of this Act.

SCHEDULE

(section 14 (2))

CONTROLLED INVESTIGATIONS COORDINATION COMMITTEE

Functions of the Committee

1. (1) The functions of the Committee shall be to —
 - (a) assess the effectiveness of policies and measures of criminal investigations to combat serious crime related activities;
 - (b) make recommendations to the Minister for legislative, administrative and policy reforms in respect to criminal investigations; and
 - (c) promote coordination among the investigatory authorities, supervisory authorities and other institutions with a view to improving the effectiveness of existing policies and measures to combat financial offences through criminal investigations.
- (2) Notwithstanding the generality of subparagraph (1), the Committee shall —
 - (a) protect the interests of interception subjects and targets;
 - (b) receive and hear complaints in respect of the use of warrants issued under this Act, and shall in hearing the complaints —
 - (i) apply the same principles as would be applied by a court on an application for judicial review,
 - (ii) consider matters before the Committee with a sufficient degree of care as to ensure the protection of privacy and interests of complainants in line with section 8, and
 - (iii) impose administrative sanctions, award compensation, issue and follow up enforcement procedures to ensure compliance with conditions of warrants issued under this Act:
Provided that an administrative sanction, award of compensation or decision made by the Committee under this paragraph shall have the same effect as a judgment of the court;
 - (c) recommend regulations for the better carrying out of its responsibilities under this Act, including —
 - (i) codes of conduct, and
 - (ii) records to be kept by investigatory authorities for applications for warrants under this Act;
 - (d) advise the Minister on matters relating to controlled investigations techniques and proposed policy and legislation; and
 - (e) perform all additional functions and duties as may be prescribed.

Powers of the Committee

2. For the purpose of carrying out its functions under this Act, the Committee shall have power to do all such things as appear to it to be necessary or incidental to the proper discharge of its functions, and may, in that behalf, act in association with other persons or bodies who are knowledgeable about controlled investigations.

Composition of Committee

3. (1) The Committee shall comprise of the following members —
- (a) the Permanent Secretary responsible for defence, justice and security or his or her representative;
 - (b) the Permanent Secretary responsible for international cooperation or his or her representative;
 - (c) the Attorney General, or his or her representative; and
 - (d) six other persons, appointed by the Minister in consultation with the Chairperson, from among persons with —
 - (i) at least 10 years' experience in human rights, finance, law enforcement, intelligence, information and communications technology, including any other related subject, and
 - (ii) expertise in subjects under subparagraph (i).
- (2) A representative under subparagraph (1) shall not be below the level of Deputy Permanent Secretary.
- (3) A person under subparagraph (1) (d) shall be subjected to a security clearance to access sensitive or classified information.

Chairperson of Committee

4. (1) The Committee shall have a Chairperson who shall be —
- (a) a Justice of Appeal or retired Justice of Appeal, judge or retired judge, or legal practitioner who qualifies to be appointed as a judge; and
 - (b) appointed by the Minister.
- (2) The members of the Committee shall appoint, from among their number, a vice-chairperson.
- (3) A member of the Committee shall hold office for a term not exceeding four years and shall be eligible for re-appointment for another four year term upon the expiry of his or her term of office.

Disqualification for appointment as a Committee Member

5. A person shall not be appointed as a member of the Committee under paragraph 3 (d) or be qualified to continue to hold office who has —
- (a) in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside; or
 - (b) within a period of 10 years immediately preceding the date of his or her proposed appointment, has been convicted of a criminal offence and sentenced by a court of competent jurisdiction to imprisonment for a period of six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

A.170

Vacation of office

6. A Committee member shall vacate his or her office —
- (a) if he or she becomes disqualified in terms of paragraph 5 of this Schedule to hold office as a Committee member;
 - (b) if he or she is absent from three consecutive meetings of the Committee without reasonable excuse;
 - (c) upon his or her death;
 - (d) upon the expiry of one month's notice, given in writing to the Minister, of his or her intention to resign his or her office;
 - (e) upon the expiry of such time as the Minister may specify in writing, notifying him or her of his or her removal from office by the Minister;
 - (f) if he or she becomes mentally or physically incapable of performing his or her duties, as certified by a qualified medical practitioner, as a member of the Committee; or
 - (g) if he or she is convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine.

Removal and suspension from office by Minister

7. (1) The Minister may, if he or she is satisfied that a Committee member has acted improperly as such member, or is mentally or physically incapable of performing his or her duties efficiently, require that member, in writing, to vacate his or her office within such time as he or she may specify.
- (2) The Minister shall, in writing, suspend from office a Committee member against whom criminal proceedings are instituted for an 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 remuneration or allowances as a member of the Committee.

Filling of vacancies

8. On the death of, or the vacating of office by, a Committee member, the Minister shall appoint a person to take the place of the member who died or vacated his or her office until the expiry of the period during which such member would have otherwise continued in office.

Secretariat

9. The Ministry responsible for defence, justice and security shall act as the Committee's Secretariat.

Meetings of Committee

10. (1) Subject to the provisions of this Act, Committee shall regulate its own proceedings.

(2) The Committee shall meet as often as is necessary or expedient for the discharge of its functions:

Provided that at least twelve ordinary meetings shall be held in each year, and such meetings shall be held at such place, time and day as the Chairperson may determine.

(3) Upon giving notice in writing of not less than 14 days, a meeting of the Committee may be called by the Chairperson provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving of a shorter notice.

(4) The quorum at any meeting of the Committee shall be a simple majority of the members of the Committee.

(5) There shall preside at any meeting of the Committee —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of the Chairperson and Vice-Chairperson, such member as the member's present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Committee on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding shall have a casting vote in addition to that person's deliberative vote.

Disclosure of interest

11. (1) If a member is present at a meeting of the Committee 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 Committee otherwise directs, take part in any discussion or voting of the Committee on such matter.

(2) A disclosure of interest made under subparagraph (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 subparagraph (1), and a decision by the Committee is made benefitting such member, such decision shall be void to the extent that it benefits such member.

(4) A member who contravenes subparagraph (1) commits an offence.

Confidentiality

12. (1) A member or any person attending a meeting of the Committee shall observe and preserve the confidentiality of all matters coming before the Committee, and such confidentiality shall subsist even after the termination of their terms of office or their expert mandates.

(2) Any person to whom confidential information is revealed through working with the Committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law.

A.172

(3) Notwithstanding the provisions of paragraph (1), a member may disclose information relating to the affairs of the Committee 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.

(4) A person who contravenes the provisions of this paragraph commits an offence.

Co-optation of advisory personnel to Committee

13. The Committee may co-opt any person to attend any meeting of the Committee on any matter for the purpose of assisting or advising the Committee, but such person shall have no right to vote.

Committee's funds

14. The Committee's funds shall consist of monies allocated to it from the Consolidated Fund.

Payment of Members

15. A Committee member shall be paid such allowance and such travelling expenses, incurred in connection with his or her service on the Committee, as the Minister may determine.

Signification of documents

16. All decisions of the Committee shall be signified under the hand of the Chairperson of the Committee, or a member who presided at the meeting where the decision is made.

Annual Report

17. (1) The Committee shall, within a period of six months of the end of the financial year, or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive report on its operations during such year.

(2) The Minister shall, within 30 days of him or her receiving the report under subparagraph (1), lay such report before the National Assembly.

A.173

PASSED by the National Assembly this 4th day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

EXTRADITION (AMENDMENT) ACT, 2022

No. 15



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 9 of Cap. 09:03

An Act to amend the Extradition Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Extradition (Amendment) Act, 2022.
2. Section 9 of the Extradition Act is amended by inserting immediately after subsection (3), the following new subsection —
“(4) The transmission of a warrant referred to in subsection (3), shall be done within 7 days of receipt of the requisition for the surrender of the fugitive criminal.”.

Short title
Amendment
of section 9
of Cap. 09:03

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

**MUTUAL ASSISTANCE IN CRIMINAL MATTERS
(AMENDMENT) ACT, 2022**

No. 16



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 31 of Cap. 08:04
3. Amendment of section 32 of the Act

An Act to amend the Mutual Assistance in Criminal Matters Act.

Date of assent: 25.02.2022

Date of commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Mutual Assistance in Criminal Matters (Amendment) Act, 2022.

Short title

2. The Mutual Assistance in Criminal Matters Act (herein after referred to as “the Act”) is amended by substituting for section 31 the following section —

Amendment of section 31 of Cap. 08:04

“Requests for
restraining
orders” 31. Where —

- (a) a criminal proceeding has commenced in a foreign country in respect of a serious offence;
- (b) there are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Botswana; and
- (c) the foreign country requests the Director of Public Prosecutions to obtain the issue of a restraining order under the Proceeds of Serious Crime Act against the property,

the Director of Public Prosecutions may, not later than 7 days from the date of a request made under paragraph (c), apply to a magistrate’s court or the High Court for the restraining order requested by the foreign country.”.

3. The Act is amended by substituting for section 32 the following section —

Amendment of section 32 of the Act

“Requests for
information
gathering
orders” 32. (1) Where —

- (a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a serious offence;

- (b) a document in relation to the offence is reasonably believed to be located in Botswana; and
 - (c) the foreign country requests the Director of Public Prosecutions to obtain the issue of —
 - (i) a production order under the Proceeds and Instruments of Crime Act in respect of the document; or
 - (ii) a search warrant under the Criminal Procedure and Evidence Act in respect of the document,the Director of Public Prosecutions may, not later than 7 days from the date of a request made under paragraph (c), apply to a magistrate or a judge of the High Court for the order requested by the foreign country.
- (2) Where —
- (a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a serious offence that is —
 - (i) a money laundering offence in respect of proceeds of a serious offence; or
 - (ii) an ancillary offence in relation to an offence of a kind referred to in subparagraph (i);
 - (b) information about transaction conducted through an account with a financial institution in Botswana is reasonably believed to be relevant to the proceeding or investigation; and
 - (c) the foreign country requests the Director of Public Prosecutions to obtain the issue of an order under the Proceeds and Instruments of Crime Act directing the financial institution to give information to the police about transactions conducted through the account,
- the Director of Public Prosecutions may, not later than 7 days from the date of a request made under paragraph (c), apply to a magistrate or a judge of the High Court for the order requested by the foreign country.”.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

**PRECIOUS AND SEMI-PRECIOUS STONES (PROTECTION)
(AMENDMENT) ACT, 2022**

No. 17



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 66:03
3. Amendment of section 8 of the Act
4. Amendment of section 20 of the Act
5. Insertion of section 20A. in the Act
6. Insertion of section 35A. in the Act

An Act to amend the Precious and Semi-Precious Stones (Protection) Act.

Date of Assent: 25.02.2022

Date of Commencement: 25.02.2022

ENACTED by the Parliament of Botswana.

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| <p>1. This Act may be cited as the Precious and Semi-Precious Stones (Protection) (Amendment) Act, 2022.</p> | Short title |
| <p>2. The Precious and Semi-Precious Stones (Protection) Act (hereinafter referred to as “the Act”) is amended in section 2 by inserting in their correct alphabetical order, the following new definitions —</p> <p>““investigatory authority” has the same meaning assigned to it under the Financial Intelligence Act;</p> <p>“supervisory authority” has the same meaning assigned to it under the Financial Intelligence Act.”.</p> | Amendment of section 2 of Cap. 66:03 |
| <p>3. Section 8 of the Act is amended by substituting for subsection (2), the following new subsection —</p> <p>“(2) The Minister shall not issue a precious stones dealer’s licence to —</p> <p>(a) a person who —</p> <p>(i) is under the age of 18 years,</p> <p>(ii) is subject of an investigation by a supervisory authority or an investigatory authority;</p> <p>(iii) is a person holding a senior management position in a company which is disqualified from trading by a professional, or similar body or a supervisory authority;</p> <p>(iv) is reasonably determined by a supervisory authority to not be a fit and proper person to hold a precious stones dealer’s licence;</p> | Cap. 08:07 Cap. 08:07 Amendment of section 8 of the Act |

- (v) who is a shareholder or a director of a company which has contravened this Act or any other law,
- (vi) has been adjudged or otherwise declared bankrupt, whether under the Laws of Botswana or elsewhere, and has not been discharged, or
- (vii) has, within a period of 5 years immediately preceding the date of his or her application for a licence been convicted in Botswana of a criminal offence, relating to the illicit possession or dealing in precious stones or semi-precious stones, or outside Botswana of an offence relating to illicit possession or dealing in precious stones or semi-precious stones;
- (b) a company which —
 - (i) is in liquidation or under judicial management, except where such liquidation or judicial management is a part of a scheme for the reconstruction or amalgamation of such company, or
 - (ii) has among its directors or shareholders any person who would be disqualified in terms of paragraph (a); or
- (c) any person to whom, for any other reason, the issue of the licence applied for is not warranted or is undesirable.”.

Amendment of section 20 of the Act

4. The Act is amended in section 20 by substituting paragraph (d) for the following paragraph —

“(d) is a person referred to under section 8 (2);”.

Insertion of section 20A in the Act

5. The Act is amended by inserting immediately after section 20, the following new section —

“Suspension of precious stones dealer’s licence

20A. (1) The Minister may suspend the precious stone licence of any dealer if he is satisfied that the dealer —

- (a) has not carried out a business of which the dealer is licensed with integrity, prudence and professional skill;
 - (b) has, without reasonable excuse, failed to comply with terms and conditions of the licence or a provision of this Act; or
 - (c) has obtained the licence by means of fraud or misrepresentation.
- (2) Notwithstanding the provisions of subsection (1), the Minister may suspend a precious dealer’s licence on the written request by the dealer.

(3) The Minister shall, where he decides to suspend a precious dealer’s licence —

- (a) give notice of such suspension, in writing, to the dealer, which notice shall —
 - (i) state the reasons for such suspension, and

- (ii) inform the dealer to make any representation within a specified period, which shall not be more than 21 days; and
 - (b) take into account any representation made by the dealer in terms of paragraph (a) (ii).
- (4) Where the Minister has suspended a licence, under this section, he shall specify, in the notice referred to subsection (3) (a), the business operations of the precious dealer's licence that have been suspended.
- (5) Where a precious dealer's licence has been suspended under this section, the dealer shall —
- (a) not carry out the part of the business operation in relation to which the suspension relates; and
 - (b) continue to be subject to the provisions of this Act as if the licence had not been suspended, unless directed otherwise by the Minister.
- (6) A dealer that continues to carry out business operations for which the suspension relates commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years or to both.”.

6. The Act is amended by inserting immediately after section 35, the following new section —

“Suspension
of semi-
precious
stones
dealer's
licence

- 35A. (1) The Minister may suspend the semi-precious dealer's licence of any dealer if he is satisfied that the dealer —
- (a) has not carried out a business of which the dealer is licensed with integrity, prudence and professional skill;
 - (b) has, without reasonable excuse, failed to comply with terms and conditions of the licence or a provision of this Act; or
 - (c) has obtained the licence by means of fraud or misrepresentation.
- (2) Notwithstanding the provisions of subsection (1), the Minister may suspend a semi-precious dealer's licence on a written request by the dealer.
- (3) The Minister shall, where he decides to suspend a semi-precious dealer's licence —
- (a) give notice of such suspension, in writing, to the dealer, which notice shall —
 - (i) state the reasons for such suspension, and
 - (ii) inform the dealer to make any representation within a specified period, which shall not be more than 21 days; and
 - (b) take into account any representation made by the dealer in terms of paragraph (a) (ii).
 - (4) Where the Minister has suspended a licence, under this section, he shall specify, in the notice referred to subsection (3) (a), the business operations of the semi-precious dealer's licence that have been suspended.

Insertion of
section 35A
in the Act

A.182

- (5) Where a semi-precious dealer's licence has been suspended under this section, the dealer shall —
- (a) not carry out the part of the business operation in relation to which the suspension relates; and
 - (b) continue to be subject to the provisions of this Act as if the licence had not been suspended, unless directed otherwise by the Minister.
- (6) A dealer that continues to carry out business operations for which the suspension relates commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 10 years or to both.”.

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

REAL ESTATE PROFESSIONALS (AMENDMENT) ACT, 2022

No. 18



of 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 20 of the Act

An Act to amend the Real Estate Professionals (Amendment) Act.*Date of Assent: 25.02.2022**Date of Commencement: 25.02.2022*

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Real Estate Professionals (Amendment) Act, 2022.

Short title

2. Section 20 is amended by inserting immediately after subsection (5) the following new subsections —

Amendment of section 20 of the Act

“(6) for the purpose of subsection (4), “fit and proper” means —

- (a) not have been convicted of a serious offence in Botswana;
- (b) not have been convicted outside Botswana of a serious offence, which, if committed in Botswana would have been a serious offence;
- (c) not be an unrehabilitated insolvent;
- (d) not be the subject of an investigation by a supervisory authority or an investigatory authority;
- (e) not have been a person holding a senior management position in a company which is disqualified from trading by a professional body or supervisory authority; and
- (f) periodic reassessment of paragraphs (a) to (e), as the Council may determine.

(7) For purposes of subsection (6) “serious offence” has the same meaning assigned under the Proceeds and Instruments of Crime Act.”.

Cap. 08:03

A.184

PASSED by the National Assembly this 1st day of February, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.

Statutory Instrument No. 13 of 2022

FINANCIAL INTELLIGENCE ACT
(Cap. 08:07)

**FINANCIAL INTELLIGENCE (IMPLEMENTATION OF UNITED NATIONS
SECURITY COUNCIL RESOLUTIONS) REGULATIONS, 2022**
(Published on 25th February, 2022)

ARRANGEMENT OF REGULATIONS

REGULATION

PART I — *Preliminary*

1. Citation
2. Interpretation
3. Application

PART II — *Listing and De-Listing*

4. National listing
5. Request for national listing by foreign country
6. Freezing of property held by nationally listed person, entity or structured group
7. Application for review
8. Publication of national listing
9. Proposing names for designation to United Nations Security Council
10. Designations made by United Nations Security Council
11. Freezing of property held by designated person
12. Claim by third party
13. National de-listing
14. Application for de-listing from United Nations Security Council List
15. Unfreezing of property following de-listing from United Nations Security Council List
16. Basis for maintaining property freeze after de-listing
17. Application to unfreeze where property was frozen in error

PART III — *Conditions and Procedure for Utilisation of Frozen Property*

18. Approval of usage of property by nationally listed person, entity or structured group
19. Procedure for approval and utilisation of frozen property of designated person, entity or group

PART IV — *Prohibitions and Sanctions in Relation to Designated Persons, Entities or
Groups or Nationally Listed Persons, Entities or Structured Groups*

20. Prohibition on dealing with property held by designated or nationally listed person
21. Prohibition of making property, etc. available to designated or nationally listed person
22. Prohibition of travel by designated or nationally listed person
23. Prohibition of landing and taking off of certain aircrafts

PART VI — *Information*

- 24. Circulation of lists
- 25. Notice of amendment to lists to be given

PART V — *General*

- 26. Failure to file return report
- 27. Applications to Court
- 28. Revocation of S.I. No. 9 of 2020
- 29. Savings

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 63 of the Financial Intelligence Act, the following Regulations are hereby made —

Citation **1.** These Regulations may be cited as the Financial Intelligence (Implementation of United Nations Security Council Resolutions) Regulations, 2022.

Interpretation **2.** In these Regulations, unless the context otherwise requires —
 “applicable resolutions” means the current United Nations Security Council Resolutions and future successor Resolutions relating to —
 (a) the prevention and suppression of terrorism;
 (b) countering financing of terrorism;
 (c) countering financing of proliferation; and
 (d) any other threat to international peace and security as determined by the United Nations Security Council,
 issued under Chapter VII of the United Nations Charter, including but not limited to the following Resolutions —
 (i) Resolution 1267 of 1999;
 (ii) Resolution 1373 of 2001;
 (iii) Resolution 1718 of 2006;
 (iv) Resolution 1874 of 2009;
 (v) Resolution 2087 of 2013;
 (vi) Resolution 2094 of 2013;
 (vii) Resolution 2231 of 2015
 (viii) Resolution 2253 of 2015;
 (ix) Resolution 2270 of 2016;
 (x) Resolution 2321 of 2016; and
 (xi) Resolution 2356 of 2017;

“Directorate” means Directorate of Intelligence and Security;

“focal point” means the organ established pursuant to the United Nations Security Council Resolution 1730 of 2006 to —

- (a) receive requests for the de-listing of United Nations Security Council listed persons other than persons listed under the ISIL (Da’esh) and Al-Qaida Sanctions regime;
- (b) receive and transmit to the United Nations Security Council ISIL (Da’esh) and Al-Qaida Sanctions Committee communications from individuals who —
 - (i) have been removed from the ISIL (Da’esh) and Al-Qaida Sanctions List, and
 - (ii) claim to have been subjected to the sanctions measures as a result of false or mistaken identification or confusion with individuals listed on the ISIL (Da’esh) and Al-Qaida Sanctions List; and

- (c) receive requests from a listed person, entity or structured group for exemptions from the travel ban and asset freeze for all United Nations Security Council sanctions regimes pursuant to Resolution 2255 of 2015;

“freeze” means to prohibit the transfer, conversion, disposition or movement of any property or economic resources including oil and natural resources that are owned or controlled by a designated person or entity or by a nationally listed person or group, on the basis of, and for the duration of or the validity of an action initiated by a United Nations Security Council, in accordance with the applicable resolution, a competent national authority or a court of competent jurisdiction;

“national list” means the list of names of persons, entities or structured groups declared by the Minister as terrorist or terrorist groups, whom authorities must take action for the prevention and combating of terrorist activities specified in the Counter-Terrorism Act;

Cap. 08:08

“Office of the Ombudsperson” means the organ established pursuant to the United Nations Security Council Resolution 1904 of 2009 to receive requests from individuals, groups, undertakings or entities seeking to be removed from the ISIL (Da’esh) and Al-Qaida Sanctions List; and

“United Nations Security Council List” means the list of names of persons, entities and groups designated by United Nations Security Council as persons or groups against whom member states must take action for the prevention and combating of any activity specified in the applicable Resolution.

3. These Regulations shall apply to —

Application

- (a) a designated person, entity or group;
- (b) a nationally listed person, entity or structured group;
- (c) a specified party;
- (d) a supervisory authority;
- (e) an accountable institution;
- (f) a relevant Government agency or department; and
- (g) any person in Botswana including a person who is not a citizen of Botswana.

PART II — Listing and De-Listing

4. (1) The Director General of the Directorate shall submit information in relation to a person, entity or structured group to the Committee, in writing where —

National listing

- (a) a person, entity or structured group has been convicted of an offence under the Counter Terrorism Act; or
- (b) based on intelligence information, the Directorate has reasonable grounds to believe that the person, entity or structured group —
 - (i) is engaged in terrorism,
 - (ii) is owned wholly or jointly by a nationally listed person, entity or structured group, or designated person, entity or group,
 - (iii) is controlled directly or indirectly by a nationally listed person, entity or structured group, or a designated person, entity or group,
 - (iv) is acting on behalf of a nationally listed person, entity or structured group, or a designated person, entity or group, or

Cap. 08:08

- (v) is acting at the direction of a nationally listed person, entity or structured group, or a designated person, entity or group.
- (2) The information pertaining to a person, entity or structured group for purposes of subregulation (1) shall include, where available, the —
 - (a) name of the person, family and pseudo names, any alias, including any alternative names and spelling, and titles of the person or group;
 - (b) place and date of birth or if —
 - (i) a company, the name of the company, the names of its directors, shareholders and beneficial owners, the date of registration or incorporation including the registration number and any other entity identification information, or
 - (ii) a trust, or other legal arrangement, the registered name of the trust or legal arrangement, the names of trustees or persons exercising ultimate control of the trust or legal arrangement and beneficial owners of the trust or legal arrangement, the date of registration or incorporation of the trust or legal arrangement, including the registration number and any other entity identification information;
 - (c) nationality, or address of the registered office;
 - (d) passport number, identity card number or registration number;
 - (e) gender;
 - (f) physical, postal and electronic mail addresses;
 - (h) occupation; and
 - (i) any other information which the Committee considers relevant.
- (3) Upon receipt of a signed copy of a judgment convicting a person, entity or structured group of an offence under the Counter Terrorism Act, the Committee shall, without delay, make a recommendation to the Minister to declare the person, entity or structured group as a terrorist or a terrorist group.
- (4) Upon receipt of a recommendation from the Committee relating to a convicted person, entity or structured group, the Minister shall declare the person, entity or structured group a terrorist or terrorist group.
- (5) Where the Committee is in receipt of information referred to in subregulation (1) (b), the Committee shall, if satisfied that the information meets the criteria for declaring a person, entity or structured group as a terrorist or terrorist group, make a recommendation to the Minister to declare the person, entity or structured group as a terrorist or terrorist group.
- (6) Upon receipt of a recommendation from the Committee based on intelligence information, the Minister may, if satisfied that the recommendation meets the designation criteria, declare the person, entity or structured group a terrorist or terrorist group.

Request for
national listing
by foreign
country
Cap. 08:04

5. (1) Where a request for national listing is made by a foreign country, the request shall be submitted to the Director of Public Prosecutions in accordance with the Mutual Assistance in Criminal Matters Act.

(2) Notwithstanding the provisions of the Mutual Assistance in Criminal Matters Act, upon receipt of a request from a foreign country, the Director of Public Prosecutions shall immediately forward the request to the Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

(3) The request for national listing by a foreign country referred to in subregulation (1) shall follow the process for national listing in regulation 4.

6. (1) Where the Minister nationally lists a person, entity or structured group, under regulation 4 or 5, the Chairperson of the Committee or any other member of the Committee, authorised in writing by the Chairperson of the Committee for that purpose, shall, without delay, cause a police officer or Director of Public Prosecutions to make an *ex parte* application to a court, for a freezing Order, in terms of section 17 or 18 of the Counter-Terrorism Act.

Freezing of property held by nationally listed person, entity or structured group

(2) The Chairperson of the Committee or any other member of the Committee, authorised in writing by the Chairperson of the Committee for that purpose, shall on receipt of the freezing Order, without delay, circulate or cause to be circulated through electronic mail, surface mail or any other means available, a copy of the freezing Order to —

- (a) supervisory authorities;
- (b) specified parties;
- (c) accountable institutions;
- (d) relevant Government agencies or departments; and
- (e) any other person.

(3) The Agency or the Directorate shall on receipt of the freezing Order —

- (a) ensure that a specified party, accountable institution, Government agency or department, or any other person takes necessary action; and
- (b) provide guidance, where necessary, to the specified party accountable institution, Government agency or department, or any other person, holding funds, property or other economic resources of a nationally listed person, entity or structured group in relation to their obligations under these Regulations.

(4) A specified party, accountable institution, relevant Government agency or department, and any other person shall on receipt of the freezing Order, without delay and without prior notification to the listed person, entity or structured group, identify and freeze all —

- (a) property or economic resources that are owned or controlled by a nationally listed person, entity or structured group and not just those that can be tied to a particular terrorist act, plot or threat;
- (b) property or economic resources that are wholly or jointly owned or controlled, directly or indirectly, by a nationally listed person, entity or structured group;
- (c) property or economic resources derived from or generated by property or economic resources owned or controlled directly or indirectly by a nationally listed person, entity or structured group;
- (d) property or economic resources of a person, entity or structured group acting on behalf of a nationally listed person, entity or structured group; and
- (e) property or economic resources of a person, entity or structured group acting at the direction of a nationally listed person, entity or structured group.

(5) Subject to the provisions of these Regulations, no person shall, unless authorised under these Regulations, make property or economic resources or financial or other related services available directly or indirectly to —

- (a) a nationally listed person, entity or structured group;
- (b) any entity wholly or jointly owned by a nationally listed person, entity or structured group;
- (c) any person, entity or structured group controlled directly or indirectly by a nationally listed person, entity or structured group;

- (d) any person, entity or structured group acting on behalf of a nationally listed person, entity or structured group; or
 - (e) any person, entity or structured group acting at the direction of a nationally listed person, entity or structured group.
- (6) A person referred to under subregulation (3) shall record property or economic resources frozen under this regulation, against the names of the owners and beneficial owners for proper management.
- (7) A specified party, accountable institution, Government agency or department, or any other person shall, without delay, and in writing inform the Chairperson or any member of the Committee authorised in writing by the Chairperson for that purpose —
- (a) of any action taken; and
 - (b) of the full particulars of any property or economic resources identified and frozen (including transactions and attempted transactions relating to the property or economic resources).
- (8) Where a specified party, accountable institution, Government agency or department, or any other person searches their database and does not identify any property or economic resources, the specified party, accountable institution, government agency or department, or any other person shall make a nil return report, in writing, to the Chairperson or any member of the Committee authorised in writing by the Chairperson for that purpose.
- (9) The particulars required under sub-regulation (7) (b) shall include —
- (a) in relation to a specified party that is a financial institution —
 - (i) the account number,
 - (ii) the name of the account holder,
 - (iii) the time of the freezing of the account,
 - (iv) the balance of the account at the time of freezing of the funds, property or economic resources,
 - (v) the related accounts, if any, including the balance of property or economic resources in the accounts at the time of freezing; and
 - (vi) an explanation as to the grounds for the identification of the related accounts; and
 - (b) in relation to any other specified party, accountable institution, Government agency or department, or any other person —
 - (i) the nature and description of the property or economic resources,
 - (ii) the name of the owner or holder of the property or economic resources,
 - (iii) the mode and date of acquisition of the property or economic resources,
 - (iv) the location of the property or economic resources, and
 - (v) the transactions relating to the property or economic resources.
- (10) A person who knowingly contravenes subregulation (5) commits an offence of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter-Terrorism Act.
- (11) Where the Minister has reasonable grounds to believe that a nationally listed person has property or any involvement in a foreign country, the Minister shall, without delay, cause the Director of Public Prosecutions to forward a copy of the declaration made by the Minister referred to in subregulation (1) to the Ministry responsible for international affairs to request the foreign country to freeze the property or economic resources of the listed person providing —

- (a) as much information as possible to allow for identification of the nationally listed person; and
- (b) information containing as much detail as possible on the reasons or basis for the listing.

7. A nationally listed person, entity or structured group aggrieved by the decision of the Minister declaring the person, entity or structured group as a terrorist or terrorist group may make an application to the High Court for a review of the decision.

Application for review

8. (1) The Chairperson of the Committee shall, without delay, upon receipt of a freezing Order referred to in regulation 6 (1), but in no case before the circulation of the freezing Order under regulation 6 (2), publish a national listing in the *Gazette* or such media as the Committee may consider appropriate, unless the Committee —

Publication of national listing

- (a) believes that a listed person is an individual under the age of 18 years; or
- (b) considers that the national listing should be restricted —
 - (i) in the interest of national security or justice, or
 - (ii) for reasons connected with the prevention and detection of financial offences.

(2) The Chairperson of the Committee shall, after the national list has taken effect, immediately inform, in writing, the nationally listed person, entity or structured group of —

- (a) their inclusion in the national list;
- (b) the implications of the national listing;
- (c) the procedure for review and information on de-listing process;
- (d) the possibility of making request for utilising part of the frozen property or economic resources in accordance with these Regulations; and
- (e) the possibility of making a request for a travel ban exemption.

(3) For purposes of subregulation (2) (b), the implications of national listing refer to the imposition of an asset freeze, arms and travel embargo.

(4) The Committee shall maintain a list of persons, entities and structured groups who have been declared as terrorists or terrorist groups.

9. Where the Minister declares a person, entity or structured group as a terrorist or terrorist group and the person, entity or structured group has property or any involvement in a foreign country, the Minister shall, through the ministry responsible for international affairs, immediately forward a proposal for the inclusion of such person, entity or structured group in the United Nations Security Council List in the form prescribed by the United Nations Security Council and shall —

Proposing names for designation to the United Nations Security Council

- (a) provide as much relevant information as possible to allow for identification of the nationally listed person, entity or structured group;
- (b) provide a statement of case containing as much detail as possible on the basis for the proposed designation; and
- (c) specify whether the status of Botswana as designating state be made known.

10. (1) As soon as a change to the United Nations Security Council List takes effect, the Minister responsible for international affairs shall, without delay, forward the list through electronic mail or any other means available to the Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

Designations made by United Nations Security Council

(2) The Chairperson of the Committee or any other member of the Committee authorised in writing by the Chairperson of the Committee for that purpose, shall, without delay, upon receipt of the United Nations Security Council List referred to in subregulation (1), and in no case later than 16 hours, circulate, through electronic mail, surface mail or any other means available, the list to —

- (a) supervisory authorities;
- (b) investigatory authorities;
- (c) specified parties;
- (d) accountable institutions;
- (e) Government agencies or departments; and
- (f) any other person.

(3) The Agency or the Directorate shall on receipt of the United Nations Security Council List, without delay, —

- (a) ensure that a specified party, accountable institution, Government agency or department, or any other person takes necessary action; and
- (b) provide guidance, where necessary, to the specified party, accountable institution, Government agency or department, or any other person, holding funds, property or other economic resources of a designated person, entity or group in relation to their obligations under these Regulations.

Freezing of property held by designated person

11. (1) A specified party, accountable institution, relevant Government agency or department, or any other person to whom the United Nations Security Council List has been circulated shall, without delay, without prior notification, and in no later than 8 hours, identify and freeze all —

- (a) property or economic resources that are owned or controlled by a designated person, entity, or group, and not just those that can be tied to a particular terrorist act, plot or threat;
- (b) property or economic resources that are wholly or jointly owned or controlled, directly or indirectly, by a designated person, entity or group;
- (c) property or economic resources derived from or generated by property or economic resources owned or controlled directly or indirectly by a designated person, entity or group;
- (d) property or economic resources of a person, entity or group acting on behalf of a designated person, entity or group; or
- (e) property or economic resources of a person, entity or group acting at the direction of a designated person, entity or group.

(2) For purposes of subregulation (1), in determining whether a designated person, entity or group controls property or economic resources, the fact that such property or economic resources is held in the name of an associate or relation is immaterial.

(3) A person referred to under subregulation (1) shall record property or economic resources frozen under this regulation, against the names of the owners and beneficial owners for proper management.

(4) Subject to these Regulations or the applicable Resolution, a specified party, accountable institution, relevant Government agency or department, or any other person shall not make frozen property, economic resources or financial or other related services available directly or indirectly, for the benefit of —

- (a) a designated person, entity, or group;
- (b) an entity or group that is wholly or jointly owned or controlled, directly or indirectly, by a designated person, entity or group;

- (c) a person, entity or group acting on behalf of a designated person, entity or group; or
 - (d) of a person, entity or group acting at the direction of a designated person, entity or group.
- (5) A specified party, accountable institution, Government agency or department, or any other person shall, without delay, and in writing inform the Chairperson or any member of the Committee authorised in writing by the Chairperson for that purpose —
- (a) of any action taken; and
 - (b) the full particulars of any property or economic resources identified and frozen (including transactions and attempted transactions relating to the property or economic resources).
- (6) Where a specified party, accountable institution, Government agency or department, or any other person searches their database and does not identify any property or economic resource, the specified party, accountable institution, Government agency or department, or any other person shall make a nil return report, in writing, to the Chairperson or any member of the Committee authorised in writing by the Chairperson for that purpose.
- (7) The particulars required under subregulation (5) (b) shall include —
- (a) in relation to a specified party that is a financial institution —
 - (i) the account number,
 - (ii) the name of the account holder,
 - (iii) the time of the freezing of the account,
 - (iv) the balance of the account at the time of freezing of the property or economic resources,
 - (v) the related accounts, if any, including the balance of property or economic resources in the accounts at the time of freezing, and
 - (vi) an explanation as to the grounds for the identification of the related accounts; or
 - (b) in relation to any other specified party, accountable institution, relevant Government agency or department, or any other person —
 - (i) the nature and description of the property or economic resources,
 - (ii) the name of the owner or holder of the property or economic resources,
 - (iii) the mode and date of acquisition of the property or economic resources,
 - (iv) the location of the property or economic resources, and
 - (v) the transactions relating to the property or economic resources.
- (8) The Chairperson of the Committee shall, without delay, upon receipt of a United Nations Security Council List, but in no case before the circulation of the United Nations Security Council List to a specified party, accountable institution, relevant Government agency or department, or any other person under regulation 11(1), publish the United Nations Security Council List in the *Gazette* or such media as the Committee may consider appropriate, unless the Committee —
- (a) believes that a designated person is an individual under the age of 18 years; or
 - (b) considers that the United Nations Security Council List should be restricted —
 - (i) in the interest of national security or justice, or

(ii) for reasons connected with the prevention and detection of financial offences.

(9) The Chairperson of the Committee shall, after the United Nations Security Council List has taken effect and where there is a positive return report, without delay, inform in writing, the designated person, entity or group —

- (a) with regard to designations pursuant to United Nations Security Council Resolution 1988, and any other Resolution relating to any threat to international peace and security as determined by the United Nations Security Council issued under Chapter VII of the United Nations Charter the procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines of procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under United Nations Security Council Resolution 1730; and
- (b) with regard to designations pursuant to United Nations Security Council Resolution 1267, of the availability of the United Nations Office of the Ombudsperson, pursuant to United Nations Security Council Resolutions 1904, 1989 and 2083 to accept de-listing petitions;

(10) A person who knowingly contravenes subregulation (4) commits an offence of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter-Terrorism Act.

Claim by third party

12. (1) A person, entity or structured group who claims to have a *bona fide* right, title or interest in property or economic resources frozen in accordance with regulation 6 or 11, may apply to a court of competent jurisdiction for exclusion of that person's right, title or interest from the freezing Order.

(2) An application referred to in subregulation (1) shall be accompanied by a sworn statement setting out —

- (a) the nature and extent of the right, title or interest claimed by the applicant in the property or economic resources concerned;
- (b) the time and circumstances of acquisition of the right, title or interest in the property or economic resources by the applicant; and
- (c) any additional information relevant to the application.

National de-listing

13. (1) A nationally listed person, entity or structured group may apply to court of competent jurisdiction for de-listing.

(2) An application for de-listing from the national list shall contain —

- (a) in the case of an individual —
 - (i) the full names, including any middle names, or initials and any other names or pseudonyms,
 - (ii) the date and place of birth,
 - (iii) nationality or nationalities of individual where he or she holds more than one nationality, and
 - (iv) any other information which can help to identify the individual; or
- (b) in the case of an entity or structured group —
 - (i) the full name of the group or entity, including any alternative names used,
 - (ii) date of incorporation or registration where applicable,
 - (iii) any other current state of operation, and
 - (iv) any other information which can help to identify the structured group or entity.

(3) Where the Committee reasonably believes that a nationally listed person is deceased or the listed entity or structured group has ceased to operate, the Committee shall make a recommendation to the Minister to revoke the declaration of the person, entity or structured group as a terrorist or terrorist group.

(4) Upon receipt of a recommendation from the Committee under subregulation (3), the Minister may, if satisfied that the nationally listed person is deceased or that the listed entity or structured group has ceased to operate, revoke the declaration of the person, entity or structured group as a terrorist or terrorist group.

(5) The Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose shall, within 16 hours of the revocation by court or the Minister, circulate a de-listing notice to the institution to which a national list was circulated under regulation 6 (2).

(6) A specified party, accountable institution, Government agency or department, or any other person shall within 8 hours of receipt of a notice of de-listing under subregulation (5) —

- (a) unfreeze the property or economic resources of the de-listed person, entity or structured group; and
- (b) make a defreezing return report to the Chairperson or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

(7) Where a nationally listed person, entity or structured group whose name has been submitted to a foreign jurisdiction under regulation 6 (11) is de-listed, the Minister shall, without delay, cause the Director of Public Prosecutions to forward a copy of the revocation of the declaration to the foreign jurisdiction, to unfreeze the property or economic resources of a de-listed person, entity or structured group.

14. (1) A designated person, entity or structured group or his or her legal representative may make a petition, providing reasons, for de-listing from the United Nations Security Council List through the Minister, to the office of the Ombudsperson or the Focal Point, whichever is applicable, in accordance with the de-listing guidelines and procedures provided for in the applicable Resolutions.

Application for
de-listing from
United Nations
Security
Council List

(2) An application for de-listing shall contain —

- (a) in the case of an individual —
 - (i) the full names, including any middle names, or initials and any other names or pseudonyms,
 - (ii) the date and place of birth,
 - (iii) nationality or nationalities of individual where he or she holds more than one nationality, and
 - (iv) any other information which can help to identify the individual; or
- (b) in the case of an entity —
 - (i) the full name of the entity, including any alternative names used,
 - (ii) date of incorporation or registration where applicable,
 - (iii) current any other state of operation, and
 - (iv) any other information which can help to identify the entity.

(3) Where the Minister has proposed the inclusion of a name on the United Nations Security Council List and the person bearing that name has applied to the United Nations Security Council for de-listing, the Minister may submit to the United Nations Security Council any additional information necessary for the consideration of the application.

(4) Where the Ombudsperson's office refers a petition for de-listing from the United Nations Security Council List to the Minister for comments, the Minister shall within the time specified by the Ombudsperson's office, respond to the request stating reasons for the recommendation for retention or deletion from the relevant United Nations Security Council List.

(5) Where the Minister reasonably believes that a designated person is deceased, or a designated entity or group is defunct, the Minister shall submit a request to the Ombudsperson or to the Focal Point, whichever is applicable, to remove the name and other details of the designated person, entity or group from the United Nations Security Council List.

Unfreezing of property following de-listing from United Nations Security Council list

15. (1) Where the Minister responsible for international affairs receives a notice of de-listing of a designated person, entity or group by the United Nations Security Council, the Minister shall, without delay, transmit the list through electronic mail or any other means available, to the Chairperson of the Committee or any other member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

(2) The Agency or the Directorate shall, on receipt of a notice of a de-listing, without delay, direct a specified party, accountable institution, Government agency or department, or any other person, in custody of the frozen property or economic resources of a de-listed person, entity or group to unfreeze such property or economic resources.

(3) The Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose shall, within 16 hours, cause the de-listing notice to be circulated to the institutions or any other person to which the United Nations Security Council List was circulated to under regulation 10 (2).

(4) A specified party, accountable institution, Government agency or department, or any other person shall within 8 hours of receipt of a notice of de-listing under subregulation (3) —

- (a) unfreeze the property or economic resources of the de-listed person, entity or structured group; and
- (b) make a defreezing return report to the Chairperson or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

Basis for maintaining property freeze after de-listing

16. Where a nationally listed person, entity or structured group is de-listed on the basis that the person is deceased, or the entity or structured group has ceased to operate, the property or economic resources shall remain frozen where the Committee reasonably believes that —

- (a) the property or economic resources will be transferred, directly or indirectly, to a listed person, entity or structured group, or otherwise used for terrorist purposes; or
- (b) on application to court, the unfreezing of the property or economic resources would be found to be contrary to national security.

17. (1) Where property or other economic resources were frozen as a result of similarity in names or wrong entries on the United Nations Security Council List, the person affected may submit a request to the Focal Point to unfreeze the property or economic resources.

Application to unfreeze where property was frozen in error

- (2) Where property or other economic resources were frozen as a result of —
- (a) similarity in names,
 - (b) wrong entries on the national list, or
 - (c) an error,

the person affected may apply to court to unfreeze the property or economic resources.

(3) Notwithstanding the provisions of section 60 of the Act, no administrative, criminal or civil proceedings shall lie against any person, specified party, accountable institution, Government agency or department for effecting a freezing Order on property —

- (a) based on —
 - (i) similarity in names, or
 - (ii) wrong entries on the national list; or
- (b) as a result of an error,

in the absence of bad faith, gross negligence or malice.

PART III — *Condition and Procedure for Utilisation of Frozen Property*

18. (1) A person, entity or structured group whose property or economic resources have been frozen under a national listing may make a request to the Committee to release the property, or portion thereof or other economic resources —

Approval of usage of property by nationally listed person, entity or structured group

- (a) to meet the necessary and basic expenses including payment for food stuff, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, public utility charges, or exclusively for payment of professional fees and reimbursement of incurred expenses associated with the provision of legal fees, or fees or service charges;
- (b) necessary for extraordinary expenses not provided for in paragraph (a);
- (c) to make payments due under a contract, agreement or obligation that were concluded or that arose before the person was nationally listed:

Provided the Committee —

- (i) has made a determination that the contract, agreement or obligation is not related to any activities prohibited under these Regulations, and
- (ii) has made a determination that the payment is not directly or indirectly received by the nationally listed person, entity or structured group.

(2) A request to utilise frozen property or economic resources referred to in subregulation (1) shall be accompanied by adequate supporting documents.

(3) The Committee shall consider the request to utilise funds within seven days and may grant, reduce or refuse the request made in the application as considered reasonable in the circumstances.

(4) The Committee shall, in writing, where it approves the utilisation of property or economic resources under this regulation, direct a specified party, accountable institution, Government agency or department, or any other person in custody of the frozen property or economic resources to —

C.108

Procedure for approval and utilisation of frozen property of designated person, entity or group

- (a) implement the approval; and
- (b) furnish a report to the Committee of the action taken within 24 hours.

19. (1) On receipt of a request to utilise frozen property or economic resources in respect of a designated person, the Committee, shall forward the request to the Focal Point.

(2) The Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose shall, in writing, inform the designated person, entity or group or the designated person, entity or group's representative of the approval or rejection of the request.

(3) The Chairperson of the Committee, or a person authorised by the Chairperson in writing for that purpose, shall where approval is obtained from the United Nations Security Council for —

- (a) access to frozen property or economic resources for payment of extraordinary expenses; or
- (b) access to frozen property or economic resources for payment of basic and extraordinary expenses,

direct, in writing, a specified party, accountable institution, Government agency or department, or any other person in custody of the frozen property or economic resources, to release the property or economic resources and furnish a report to the Committee of the action taken.

PART IV — Prohibitions and Sanctions in Relation to Designated Persons, Entities or Groups or Nationally Listed Persons, Entities or Structured Groups

Prohibition on dealing with property held by designated or nationally listed person

20. (1) A person shall not deal with property or economic resources held or controlled directly or indirectly or property owned wholly or jointly by a designated person, entity or group or a nationally listed person, entity or structured group except as provided for in these Regulations.

(2) Notwithstanding subregulation (1), a person may credit a frozen account of a designated person, entity or group or nationally listed person, entity or structured group with interest or other earnings due on the account provided that any such interest or other earnings are frozen in accordance with these Regulations.

(3) Any person who credits a frozen account in accordance with subregulation (2) shall, no later than 8 hours, make a credit return report, in writing, to the Committee or a person authorised by the Chairperson of the Committee for that purpose.

(4) With respect to persons or entities designated pursuant to the United Nations Security Council Resolution 1718 of 2006 or United Nations Security Council Resolution 2231 of 2015, the Committee shall —

- (a) authorise the addition to frozen accounts of interest or other earnings due on those accounts or payments due under a contract, agreement or any obligation that arose prior to the date of the designation provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen; and
- (b) authorise access to frozen property or economic resources where the Committee is satisfied that the authorisation is in accordance with the procedure set out in United Nations Security Council Resolution 1718 or United Nations Security Council Resolution 2231, respectively.

(5) With respect to persons, entities or groups designated pursuant to the United Nations Security Council Resolution 1737 of 2006 whose designation was continued pursuant to the United Nations Security Council Resolution 2231 of 2015, the Committee shall authorise a specified party, accountable institution, Government agency or department, or any other person holding frozen property or economic resources of a designated person to make any payment due under a contract, agreement or obligation that arose prior to the date of the designation:

Provided that the Committee —

- (a) is satisfied that the contract, agreement or obligation is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment brokering or services referred to in the United Nations Security Council Resolution 2231 and any future successor resolution;
- (b) is satisfied that the payment is not received, directly or indirectly by a person, entity or group subject to measures in paragraph 6 of United Nations Security Council Resolution 2231; and
- (c) has submitted to the United Nations Security Council, a prior notification at least 10 working days prior to the authorisation, the Committee's intention to authorise a payment or to unfreeze property or economic resources.

(6) Any person who knowingly or having reasonable cause to suspect, that the property or economic resources that the person is dealing with are held or controlled directly or indirectly or the property or economic resource is wholly or jointly owned by a nationally listed person or person designated under —

- (a) United Nations Security Council Resolutions 1267 of 1999, 1718 of 2006 and 1737 of 2006 commits an offence of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter Terrorism Act; or
- (b) Any other applicable resolution dealing with threats to international peace and security as determined by the United Nations Security Council under Chapter VII of the United Nations Charter commits an offence and is liable to a penalty specified in section 63 of the Act.

(7) For purposes of this regulation, “deal with” means —

- (a) in relation to property —
 - (i) use, alter, move, allow access to or transfer,
 - (ii) treat the funds in a way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use, including portfolio management; and
- (b) in relation to economic resources, exchange or to use the resources in exchange for funds, goods or services.

21. (1) A person shall not knowingly, directly or indirectly, make property or other economic resources available to or for the benefit of a designated person or nationally listed person except as provided for in these Regulations or under the applicable Resolution.

(2) A person who contravenes subregulation (1) commits an offence specified at regulation 20 (6) (a) or (b), as the case may be.

Prohibition of making property, etc. available to designated or nationally listed person

C.110

Prohibition of travel by designated or nationally listed person

22. (1) A designated person or nationally listed person, not being a citizen of Botswana, shall not enter into or transit through Botswana unless —

- (a) the entry is necessary for compliance with a judicial process;
- (b) the Committee determines that the entry is justified; or
- (c) in the case of a designated person, the travel of such person is exempted by the decision of the United Nations Security Council and the decision to exempt is duly notified to the Committee.

(2) A person who transports a designated or nationally listed person within or outside Botswana, knowing that the person is a designated or nationally listed person, and with the intention of assisting the designated or nationally listed person to evade the travel embargo imposed on the designated or nationally listed person, commits an offence and is liable to a penalty specified in section 7 of the Counter Terrorism Act.

(3) The Minister responsible for immigration shall not grant a visa to a designated person or nationally listed person unless he or she has obtained advice of the Committee that the issuance of the visa is not contrary to these Regulations.

(4) A designated person or nationally listed person who is a citizen of Botswana shall not be allowed to leave Botswana until investigations into the activities that led to his or her designation or national listing have been concluded.

(5) For purposes of this regulation, “judicial process” includes where the listed person’s presence may be necessary for the purposes of identification, testimony or other assistance relevant to the investigation or prosecution of an offence committed by someone other than that listed individual, or in relation to civil proceedings, and extradition.

Prohibition of landing and taking off of certain aircrafts

23. (1) No person shall grant permission to an aircraft to take off from, land in or overfly Botswana, wherever registered, where the aircraft has taken off from a country designated by the United Nations Security Council except in the case of an emergency landing.

(2) No person shall grant permission for an aircraft wherever registered, take off from, land in or overfly Botswana, where the aircraft is owned, leased or operated by or on behalf of a designated person, entity or group, or a nationally listed person, entity or structured group.

(3) Any person who knowingly participates in activities the object or effect of which is directly or indirectly to circumvent, enable or facilitate the contravention of this regulation commits an offence and is liable to the penalty specified in section 4 of the Counter Terrorism Act.

PART V — *Information*

Circulation of lists

24. (1) The Minister shall, without delay, through the Committee, circulate the updated United Nations Security Council List or National List upon receipt, through electronic mail, surface mail or any other means available to the relevant law enforcement, regulatory and supervisory authorities.

(2) The investigatory, regulatory and supervisory authorities shall cause the lists referred to in subregulation (1) to be circulated, without delay, to specified parties and accountable institutions in accordance with Regulations 6, 10, 13 and 16 of these Regulations.

(3) The chairperson of the Committee or any other member of the Committee authorised, in writing, by the chairperson of the Committee for that purpose shall circulate, through electronic mail, surface mail or any other means available, the national list and the United Nations Security Council List to points of entry and exit of Botswana to ensure that travel bans are effected on the designated person or nationally listed person.

(4) The Commissioner of Police and the Commissioner General Botswana Unified Revenue Services shall institute measures to prevent the direct and indirect supply, sale and transfer from Botswana using a Botswana flagged vessel or aircraft registered in Botswana, of arms and related materials, spare parts and technical advice, assistance or training related to military activities to a designated person, entity or group or nationally listed person, entity or structured group.

(5) The Committee may, on request by any interested person, provide information as may be required on the procedure adopted by the Committee, including any review or deletion on the entries made in the United Nations Security Council List, or on the national list.

25. Where any amendment is made to the United Nations Security Council List or national list, the Minister shall, without delay, through the Committee, circulate the amended lists upon receipt, through electronic and surface mail to the relevant investigatory agencies, supervisory authorities and accountable institutions who shall cause same to be circulated in accordance with regulations 6, 10, 13 and 16 of these Regulations;

Notice of amendment to lists to be given

PART VI — *General*

26. A specified party, an accountable institution, relevant Government agency or department, or any other person that fails to file a return report under these Regulations or knowingly provides wrong or false information is liable to an administrative fine specified in section 63 of the Act.

Failure to file return report

27. An application made to court under these Regulations shall be dealt with in terms of section 27 of the Counter Terrorism Act.

Applications to Court

28. The Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 are hereby revoked.

Revocation of S.I. No. 9 of 2020

29. Any decision made or action taken under the Regulations revoked under regulation 28 are hereby saved and shall be deemed to have been made under these Regulations.

Savings

MADE this 25th day of February, 2022.

PEGGY O. SERAME,
*Minister of Finance and Economic
Development.*

C.112

Statutory Instrument No. 14 of 2022

FINANCIAL INTELLIGENCE ACT
(Cap. 08:07)

FINANCIAL INTELLIGENCE REGULATIONS, 2022
(Published on 25th February, 2022)

ARRANGEMENT OF REGULATIONS

REGULATION

PART I — *Preliminary*

1. Citation
2. Interpretation

PART II — *Establishment and Ascertainment of Information*

3. Prominent influential person in private entity
4. Conduct of customer due diligence
5. Establishing identity of customer
6. Ascertainment of information concerning natural persons
7. Ascertainment of information concerning body corporate
8. Ascertainment of information concerning other entities
9. Ascertainment of information concerning partnerships
10. Ascertainment of information concerning trusts
11. Application of enhanced due diligence measures
12. Additional enhanced due diligence measures relating to beneficiaries of life insurance services
13. Application of simplified due diligence measures

PART III — *Verification of Information*

14. Verification of information
15. Verification in absence of contact person
16. Maintenance of up-to-date particulars
17. Customer acceptance policy

PART IV — *Keeping of Records*

18. Keeping of records
19. Record keeping by third parties

PART V — *Reporting Obligations of Transactions*

20. Reporting cash transactions
21. Manner of reporting suspicious transactions
22. Period of reporting
23. Intervention by Agency
24. Analysis of reports received and referral of suspected offences

PART VI — *Wire Transfers*

25. Reporting of wire transfers
26. Obligations of financial institutions when undertaking wire transfer
27. Obligations of financial institutions when undertaking wire transfer as intermediary
28. Obligations of financial institutions that receive wire transfer

PART VII — *Compliance Programmes and Group Wide Programmes*

29. Compliance programmes to be implemented by specified party
30. Internal rules concerning ascertainment and verification of identities
31. Internal rules concerning keeping of records
32. Internal rules concerning reporting of suspicious transactions
33. Supervisory action concerning implementation of group-wide programmes
34. Consolidated group supervision

PART VIII — *Miscellaneous*

35. Powers of examination
36. Certificate issued by Agency
37. Defence
38. Revocation of S.I. No. 104 of 2019

SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 63 of the Financial Intelligence Act, the following Regulations are hereby made —

PART I — *Preliminary*

1. These Regulations may be cited as the Financial Intelligence Regulations, Citation
2022.
2. In these Regulations, unless the context otherwise requires — Interpretation
 - “batch file” means a wire transfer comprising a number of wire transfers that are sent to the same financial institution and which may or may not be ultimately intended for different persons;
 - “close company” has the same meaning assigned to it under the Companies Act; Cap. 42:01
 - “company” has the same meaning assigned to it under the Companies Act;
 - “document” means an original document or copy of the original document certified to be a true copy by a commissioner of oaths, appointed under Commissioner of Oaths Act; Cap. 05:03
 - “entity” means an association, a government department, a non-governmental organisation, an international organisation, an intergovernmental organisation, legal arrangement and includes a legal person other than a Botswana company or close company or a foreign company;
 - “establishing” in relation to establishing the identity of a customer in terms of these Regulations means a two tier process consisting of ascertainment and verification and “establish” shall be construed accordingly;

C.114

- Cap. 01:02
- “foreign company” has the same meaning assigned to it under the Companies Act;
- “identity card” has the same meaning assigned to it under the National Registration Act;
- “manager” in respect of a local or foreign company, means the natural person who is the principal executive officer of the company by whatever name he or she may be designated and whether or not he or she is a director of that company;

PART II — *Establishment and Ascertainment of Information*

Prominent influential person in private entity

3. For purposes of section 2 of the Act, a senior executive of a private entity, with a turnover above P1 000 000 or the equivalent in foreign currency, is a prominent influential person.

Conduct of customer due diligence

4. For the purposes of section 16 (1) (a) and (b) of the Act, a specified party shall conduct customer due diligence for a transaction or occasional transaction of an amount equal to or in excess of P10 000.

Establishing identity of customer

5. (1) For the purposes of establishing the identity of a customer under section 20 of the Act, a specified party shall comply with these Regulations regarding ascertainment and verification of the identity of a customer.

(2) Where a specified party is not satisfied with the information received from a customer, the specified party shall —

- (a) not open an account for the customer;
- (b) not commence a business relationship with the customer;
- (c) not perform the transaction; and
- (d) consider making a suspicious transaction report in relation to the customer.

(3) Where a specified party cannot, establish the identity of a customer due to impossibility or reasonable impracticability, a specified party shall —

- (a) as far as it is reasonably possible, take steps to ascertain or verify such identity; and
- (b) without delay give written notice to the Agency of such impossibility or impracticability indicating any alternative measures used to identify or verify the identity.

(4) The steps to be taken for establishing the identity of a customer under section 20 of the Act may be completed by the employee or other representative of the specified party, but the specified party shall take reasonable steps to ensure that the person is sufficiently trained and resourced to ensure compliance with those procedures.

(5) The authority to act on behalf of another under section 20(4) of the Act shall be in Form A set out in the Schedule.

(6) For purpose of section 20(5) of the Act, a specified party shall when verifying the identity of an existing customer, take into account —

- (a) any indication that the identity of the customer, or the customer’s beneficial owner, has changed;
- (b) any transaction which is not consistent with the specified party’s knowledge of the customer;
- (c) any change in the purpose or intended nature of the specified party’s relationship with the customer; and
- (d) any other matter which might affect the specified party’s assessment of the financial offence risk in relation to the customer.

(7) Where the beneficial owner is a legal person or legal arrangement, the specified party shall take reasonable measures to understand the ownership and control structure of that legal person or legal arrangement.

6. (1) For purposes of ensuring compliance with the Act, where a specified party seeks to establish the identity of a natural person, the specified party shall ascertain the following —

Ascertainment
of information
concerning
natural persons

- (a) the person's full name;
- (b) the person's nationality;
- (c) where the person is a citizen or resident of Botswana, the identity card number and date of birth of such person;
- (d) where the person is not citizen or resident of Botswana, the passport number and date of birth of such person;
- (e) where the person is a refugee, a refugee identity card number and date of birth of such person;
- (f) where the person is a citizen or resident of Botswana, the person's residential address in Botswana;
- (g) where the person is not a citizen or resident of Botswana, the residential address in his or her country of domicile and physical address in Botswana;
- (h) the person's contact details;
- (i) the person's occupation or source of income;
- (j) nature and location of business activities, if any;
- (k) the source of funds involved in the transaction; and
- (l) an original of the recent council rate or utility bill receipt.

(2) If the person referred to in subregulation (1) does not have the legal capacity to establish a business relationship or conclude a transaction without the assistance of another person, the specified party shall ascertain the particulars referred to in subregulation (1) (a) to (g) in relation to the person who provided such assistance.

7. (1) For the purposes of ensuring compliance with the Act, where a specified party seeks to establish the identity of a body corporate, the specified party shall ascertain the following —

Ascertainment
of information
concerning
body corporate

- (a) the registered name and registration number of the body corporate;
- (b) if the body corporate is a foreign company, the name under which such body corporate conducts business in the country in which the body corporate is incorporated;
- (c) if the body corporate is a foreign company that conducts business in Botswana using a name other than the name specified under paragraph (a) or (b), the name the body corporate uses in Botswana;
- (d) if the body corporate is a foreign company, the registered address from which the body corporate operates in the country where it is incorporated or if it operates from multiple addresses in that country, the address of its head office;
- (e) if the body corporate operates within Botswana, the address from which it operates in Botswana, or if it operates from multiple addresses within Botswana, the address of the office seeking to establish a business relationship or to conclude a transaction with the specified party;
- (f) the nature of business of the body corporate;

- (g) the income tax and value added tax registration numbers of the company or close company issued by Botswana Unified Revenue Service, or if incorporated outside Botswana, such numbers issued by a similar revenue office in the country in which it is incorporated if such numbers were issued; and
 - (h) the particulars referred to in regulation 6 (1) (a), (b) or (c) whichever is applicable concerning —
 - (i) the manager of the company, or in the case of a close company, each member,
 - (ii) each natural person who purports to be authorised to establish a business relationship or conclude a transaction with a specified party on behalf of a body corporate, or
 - (iii) the identity of a natural person who either directly or indirectly holds more than 10 percent shares, voting right or other ownership interest;
 - (i) whether a copy of the resolution of the Board authorising the account signatories is provided;
 - (j) whether copies of the powers of attorney or any other authority, affecting the operation of the account and given by the directors in relation to the company, are provided; and
 - (k) whether the records submitted are sufficient to permit a reconstruction of individual transactions, including the amounts and types of currency involved, if any, so as to provide, if necessary, evidence for prosecution of criminal behaviour.
- Ascertainment of information concerning other entities
- 8.** A specified party shall ascertain, in respect of any entity —
- (a) the registered name and registration number of the entity, if registered;
 - (b) the office or place of business, if any, from which the entity operates;
 - (c) the entity's principal activities;
 - (d) the full name, residential address if available, and any one of the following details of the natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the entity —
 - (i) identity card number and date of birth, where the natural person is a citizen of Botswana, or
 - (ii) passport number and date of birth, where the natural person is not a citizen or resident of Botswana; and
 - (e) the identity of a natural person who either directly or indirectly holds more than 10 percent shares, voting right or other ownership interest.
- Ascertainment of information concerning partnerships
- 9.** A specified party shall ascertain in respect of a partnership, the partnership's —
- (a) registered name;
 - (b) office or place of business, if any, or where applicable, its registered address;
 - (c) registration number; and
 - (d) full name, residential address if available, and any one of the following details of each partner, including silent partners in a limited partnership and any other natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the partnership —

- (i) the identity card number and date of birth, where the natural person is a citizen Botswana, or
- (ii) the passport number and date of birth, where the natural person is a not a citizen or resident of Botswana, and
- (iii) refugee identity card number and date of birth, where the person is a refugee.

10. (1) A specified party shall ascertain in respect of a trust —

- (a) the full names of the trust, its registration number, its previous names and sub-trusts, if any;
- (b) the date in which the trust was set up;
- (c) the country where the trust was set up and the manner of its creation, whether by trust instrument or otherwise;
- (d) the place where the trust is administered;
- (e) tax details of the trust, if any, and the place where the trust is considered to be resident for tax purposes;
- (f) a statement of account of the trust, describing the trust assets and identifying the value of each category of the trust assets;
- (g) the source of funds used to acquire trust assets;
- (h) the particulars referred to in regulations 6 and 7, whichever is applicable, in relation to each individual and entity in the trust, including the settlor, trustee, beneficiaries, protector, if any, and the natural person exercising ultimate effective control over the trust;

Ascertainment
of information
concerning trusts

(2) For beneficiaries of a trust that are designated by characteristics or by class, specified parties shall obtain sufficient information concerning the beneficiary to enable the specified party to be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights.

11. (1) When assessing whether there is a risk of commission of a financial offence, and the extent of measures to be taken to manage and mitigate such risk, in terms of section 21(1) (a) of the Act, a specified party shall take into account —

Application of
enhanced due
diligence
measures

- (a) customer risk factors including whether —
 - (i) the customer is a legal person or legal arrangement that holds personal assets,
 - (ii) the customer is a company that has nominee shareholders or shares in bearer form,
 - (iii) the customer is a business that is cash intensive, or
 - (iv) the corporate structure of the customer is unusual or excessively complex given the nature of the company;
- (b) product, service transaction or delivery channel risk factors including whether —
 - (i) the product involves private banking,
 - (ii) the product or transaction is the one which might favour anonymity,
 - (iii) the situation involves non-face to face business relationships or transactions, without proper safeguards, such as electronic signatures,
 - (vi) payments will be received from unknown or unassociated third parties, or
 - (v) new products, new business practices, new business procedures or new delivery mechanisms, are involved.

- (2) The enhanced due diligence measures taken by a specified party in terms of section 21 (1) (e) of the Act shall include —
- (a) examining the background and purpose of the transaction; and
 - (b) increasing the degree and nature of monitoring of business relationships made, to determine whether the transaction or business relationship is suspicious.
- 12.** (1) Upon establishment of the identity of a beneficiary of a life insurance service in terms of section 23, a specified party shall where —
- (a) the beneficiary is a natural person, legal person or arrangement, keep the full name of the person, legal person or arrangement; or
 - (b) the beneficiaries are designated by specified characteristics, as a class or any other way,
- obtain sufficient information concerning the beneficiaries to satisfy itself that it will be able to verify the identity of a beneficiary at the time of the payout.
- (2) A specified party shall verify the identity of a beneficiary at the time of the payout.
- (3) Where a specified party becomes aware that all or part of the rights under the insurance policy are being, or have been assigned to a new beneficiary, the specified party shall establish the identity of the new beneficiary as soon as possible after becoming aware of the assignment and at the time of the payout.
- 13.** When assessing whether the risk of commission of a financial offence is low, in terms of section 28 (1) of the Act, a specified party shall take into account —
- (a) customer risk factors including whether the customer is —
 - (i) a public administration or a statutory body,
 - (ii) an individual resident in a low risk jurisdiction,
 - (iii) subject to regulation under this Act, or
 - (v) a company whose securities are listed on a regulated market;
 - (b) product service, transaction or delivery channel risk factors, including whether the product or service is —
 - (i) a life insurance policy for which the premium is low,
 - (ii) an insurance policy for a pension scheme which does not provide for an early surrender option, and cannot be used as collateral, or
 - (iii) a product where the risk of commission of a financial offence is managed; and
 - (c) jurisdiction risk factors, including whether the country in which the customer is resident, established or registered or operates is not a high risk jurisdiction.

PART III — *Verification of Information*

- 14.** (1) Any information or particulars ascertained by a specified party as required under Part II of these Regulations shall, be verified by the specified party by comparing such information obtained with the applicable and corresponding independent and reliable information set out in the following documentation —
- (a) a trust instrument or deed of trust;
 - (b) a national identification document issued by the person's country of origin, domicile or citizenship;
 - (c) a passport;
 - (d) a refugee identity card;

- (e) a birth certificate;
- (f) any document of authorisation to act on behalf of such person, company, trust or other entity;
- (g) a constitution or close company's certificate of incorporation, which shall be regarded as sufficient evidence that the body corporate has complied with the law to which it is subject, founding statement or partnership agreement, if any, or other similar documentation including notification of situation of registered and business address; or
- (h) any reliable document, data or information that reasonably serves to verify any of the information obtained by the specified party in ascertaining the information set out in Part II of these Regulations.

(2) If it is deemed to be reasonably necessary, taking into account any guidance notes concerning the verification of identity that may apply to a specified party, the specified party shall, in addition to the verification undertaken in terms of subregulation (1), verify any of the information or particulars ascertained as part of establishing identity by comparing such particulars with any applicable and corresponding reliable document, data or information.

15. (1) Where a specified party ascertained information, in terms of these Regulations, about a customer without contact in person, with the natural person or with the representative of the customer, the specified party shall take reasonable steps to ensure the existence and to establish the identity of that customer, taking into account any guidance notes concerning the verification of identities that may apply to that specified party.

Verification in absence of contact with person

(2) Where the customer referred to under subregulation (1) is a natural person, the specified party shall ensure the existence and to establish the identity of that customer by —

- (a) obtaining a reference from a well known professional, an employer of the customer of the specified party, or a known customer of the specified party who knows the natural person; or
- (b) requesting original recent council rates or utility bill receipt.

16. (1) A specified party or accountable institution shall take reasonable steps, taking into account any guidance notes which may apply to that specified party or accountable institution in respect of an existing business relationship, to maintain up-to-date information relating to particulars which are susceptible to change and which particulars were ascertained under these Regulations or the Act for the purpose of establishing identity.

Maintenance of up-to-date particulars

(2) A specified party shall update periodically particulars under subregulation (1) based on any risk assessment conducted in terms of section 13 of the Act.

17. (1) A specified party shall ensure that a customer acceptance policy, internal rules, programmes, policies, or procedures that are to be implemented and maintained in terms of section 14 (1) (e) of the Act are comprehensive, approved by senior management and includes clear guidelines and criteria as to —

Customer acceptance policy

- (a) the information required and methods to be used in ascertaining and verifying the identity and acceptance of current and prospective customers in accordance with these Regulations; and
- (b) any guidance notes which shall set out international standards to be met in respect of customer due diligence.

(2) The information required as part of the specified party's customer acceptance policy shall include —

- (a) relevant information pertaining to the customer's background;
- (b) the customer's country of origin and residence;
- (c) any linked accounts that the customer or any other party to the business relationship or transaction may have with the specified party;
- (d) the nature and location of the customer's business activities as well as the nature and source of personal income;
- (e) the volume or expected volume of transactions in which the customer engages or is suspected to engage in;
- (f) the customer's business partners; and
- (g) any other information that may assist the specified party to determine whether the business relationship with the customer may be vulnerable to money laundering or proceeds of any other crime.

PART IV — *Keeping of Records*

Keeping of records

18. (1) A specified party shall in addition to its responsibility under section 31 of the Act to keep records, keep a copy of each report sent to the Agency in terms of section 38 of the Act as well as copies of records and documents supporting the report in a manner that allows any additional information requested under section 52 of the Act to be forwarded without delay to the person requesting the additional information.

(2) The Agency shall keep a record of information received under section 52 of the Act.

(3) A record or document referred to in subregulations (1) and (2) shall be kept —

- (a) for a period of at least 20 years from the date of filing the report with the Agency; and
- (b) in the manner that protects the confidentiality of the copy, record or document involved.

Record keeping by third parties

19. (1) A specified party shall, where a third party keeps records on behalf of the specified party, in terms of section 33 ensure it has sufficient access to such records in order to comply with its obligations under the Act without delay.

(2) A specified party shall, in terms of section 33 (2) of the Act provide the supervisory Authority with the identification and contact details of the third party referred to in subregulation (1), including the following particulars —

- (a) the third party's full name, if the third party is a natural person or registered name, if the third party is a company or close corporation;
- (b) the name under which the third party conducts business;
- (c) the full name and contact details of the individual who exercises control over access to records kept under subregulation (1);
- (d) the physical address where the records are kept;
- (e) the address from where the third party exercises control over the records; and
- (f) the full name and contact details of the individual who liaises with the third party on behalf of the specified party concerning the retention of the records.

PART V — *Reporting Obligations of Transactions*

20. (1) A specified party or accountable institution shall report to the Agency a cash transaction concluded with a customer where the amount is equal to or in excess of P10 000 or an equivalent amount in foreign currency. Reporting cash transaction

(2) A cash transaction report required to be made under subregulation (1) shall be made in Form B set out in the Schedule and shall be sent electronically to the Agency by means of an internet based reporting portal provided by the Agency for this purpose.

(3) Where a specified party or accountable institution required to make a report under subregulation (1) does not have the technical capability, or for any other reason, is unable to make a report in the manner required under subregulation (1), the specified party, accountable institution or person shall complete the required form in writing and include such further information as may be requested by the Agency and —

- (a) send it by facsimile to the Director General at the number specified in writing by the Agency from time to time;
- (b) deliver it to the Agency; or
- (c) send it by a method determined by the Agency whether as an alternative means or as an exclusive means.

21. (1) Subject to subregulation (2), a suspicious transaction report required to be made under sections 39 and 40 of the Act shall be made in Form C set out in the Schedule and shall be sent electronically to the Agency by means of an internet based reporting portal provided by the Agency for this purpose. Manner of reporting suspicious transactions

(2) Where a specified party, accountable institution or person required to make a report under subregulation (1) does not have the technical capability, or for any other reason, is unable to make a report in the manner required under subregulation (1), the specified party, accountable institution or person shall complete the required Form C and include such further information as may be requested by the Agency and —

- (a) send it by facsimile to the Director General at the number specified in writing by the Agency from time to time;
- (b) deliver it to the Agency; or
- (c) send it by a method determined by the Agency whether as an alternative means or as an exclusive means.

(3) Where a specified party, accountable institution or person makes a report to the Agency, the Director General shall for purposes of section 6 (2) (e) of the Act, ensure that feedback is given to the person, the specified party or an accountable institution making the report within 14 working days from the date of the receipt.

22. (1) A report made in terms of section 38 or 40 of the Act shall be sent to the Agency as soon as possible, but not later than five working days after the suspicion arose concerning the transaction that gave rise to the need to report, unless the Agency, in writing, approves the sending of the report after the expiry of the period. Period of reporting

(2) A report made in terms of section 39 of the Act shall be sent to the Agency as soon as possible, but not later than five working days after the transaction was concluded, unless the Agency, in writing, approves the sending of the report after the expiry of the set period.

C.122

Intervention by
Agency

23. (1) For purposes of sections 44 and 45 of the Act, and in order to facilitate the recognition and handling of a suspected financial offence by a specified party, accountable institution or person, if on the basis of a suspicious transaction report made to the Agency under section 38 or 40 of the Act —

- (i) it is reasonably foreseeable that carrying out that transaction or other related transaction will jeopardise any investigations or proceedings; or
- (ii) the transaction will or is likely to result in such proceeds being put beyond the reach of Botswana authorities,

the specified party, accountable institution or person shall in addition to making the report within the time period specified under regulation 22, contact, as soon as reasonably possible, the Director General or Officers of the Agency, at such contact details as may be specified in writing by the Agency from time to time, for the purposes of consultation and intervention as provided for under section 45 of the Act.

(2) If after consultation, the Agency considers it necessary that the specified party, accountable institution or person may proceed with the transaction or any other transaction in respect of funds contemplated under section 45 of the Act, the specified party, accountable institution or person may continue with and carry out any such transaction as provided under section 44 of the Act.

Analysis of
reports received
and referral of
suspected
offences

24. (1) The Agency shall analyse all the information and reports received by it for the purpose of determining whether any information contained in a report constitutes reasonable grounds to suspect that —

- (a) a person, specified party or accountable institution has committed any act or omission which constitutes an offence under the Act or these Regulations; or
- (b) a person has committed an offence under the Proceeds and Instruments of Crime Act.

Cap. 08:03

(2) Where the Agency has reasonable grounds, after analysing the reports submitted to it under subregulation (1), to suspect that a person, a specified party, or accountable institution has committed an offence, it shall refer the matter, together with any recommendations the Agency may consider appropriate, to the relevant investigating authority.

PART VI — *Wire Transfers*

Reporting of
wire transfers

25. (1) For the purposes of section 42 (1) of the Act, a financial institution that through a wire transfer, receives into or sends out of Botswana, an amount equal to or in excess of P10 000, on behalf or on the instruction of a customer or any person, shall report to the Agency such transaction.

(2) The report made in terms of subregulation (1) shall contain, in respect of —

- (a) the natural or legal person making the report or other entity on whose behalf the report is made —
 - (i) the name of the person or entity,
 - (ii) the identity card number where the natural person who makes the report is a citizen of Botswana, refugee identity card number or passport number where the natural person is not a citizen or resident of Botswana,
 - (iii) registration number where the report is made on behalf of a legal person,

- (iv) the address of the person or entity,
 - (v) the type of business or economic sector of the specified party and the reporting institution,
 - (vi) where the person making the report is a natural person, the natural person's contact details, and
 - (vii) where the person making the report is a legal person or other entity, the surname, initials and contact details of a contact person;
 - (b) the transaction which is reported under subregulation (1), full particulars of —
 - (i) the amount of money transferred,
 - (ii) the value date on which the electronic transfer was effected,
 - (iii) the currency transferred and value thereof in Botswana on the date of transfer,
 - (iv) the unique transaction reference number allocated to the transaction,
 - (v) the account number concerned, where the money transferred is debited from an account held at a sending financial institution, or where the money received is credited to an account held at a receiving financial institution, and
 - (vi) the intended purpose of the electronic money transfer as stated by the customer of the financial institution making the report;
 - (c) the customer of a financial institution on whose behalf or instruction money is received into or sent out of Botswana —
 - (i) where the customer is a natural person, the name and surname, or initials and surname, identity card number, refugee identity card number or passport number and date of birth,
 - (ii) where the customer is a legal person or other entity, the name of such legal person or entity, registration number if any and the name of the natural persons with authority to conduct the transaction on behalf of the legal person or other entity, and
 - (iii) business or residential address and contact details of the customer or the natural person acting on behalf of the customer where the customer is a legal person or other entity;
 - (d) the beneficiary of money sent out of Botswana, or the originator of the money equal to or in excess of P10 000 received into Botswana —
 - (i) the full names of the beneficiary or originator,
 - (ii) the date of birth of the beneficiary or the originator,
 - (iii) identity card number, refugee identity card number or passport number of the beneficiary or originator,
 - (iv) a business or residential address of the beneficiary or originator, and
 - (v) contact details of the beneficiary or originator.
- (3) Any money or value transfer service provider that controls both the ordering and the beneficiary side of a wire transfer shall —
- (a) take into account all the information from both the ordering and beneficiary sides in order to determine whether a suspicious transaction report has to be filed; and
 - (b) file a suspicious transaction report in any country affected by the suspicious wire transfer, and make relevant transaction information available to the Agency.

Obligations of financial institutions when undertaking wire transfer

(4) A report made under this regulation shall be sent to the Agency as soon as possible, but not later than two working days after the financial institution or any of its employees has become aware of the fact that a wire transfer received into or sent out of Botswana is equal to or has exceeded the amount of P10 000.

26. (1) For the purposes of section 42 (2) of the Act, a financial institution when undertaking a cross-border wire transfer shall include accurate originator and beneficiary information as follows —

- (a) the name of the originator;
- (b) the originator's account number or unique transaction reference number; which can permit traceability, where there is no account number;
- (c) the originator's address and national identity or customer identification number and date and place of birth;
- (d) the name of the beneficiary;
- (e) the beneficiary account number, where such an account is used to process the transaction, or a unique transaction reference number which can permit traceability, where there is no account number; and
- (f) the source and purpose of funds.

(2) A financial institution shall ensure that the information accompanying a domestic wire transfer shall include required accurate originator and beneficiary information as indicated for cross-border wire transfer under subregulation (1).

(3) Originator and beneficiary information collected under this regulation shall be maintained in accordance with section 31 of the Act.

(4) An ordering financial institution shall not execute a wire transfer if the wire transfer does not comply with the requirements of these Regulations.

(5) The information referred to under subregulation (3) shall be made available within three working days of receiving a request from the beneficiary financial institution or a competent authority.

Obligations of financial institutions when undertaking wire transfer as intermediary

27. (1) A financial institution that undertakes wire transfer as an intermediary shall ensure that all originator and beneficiary information, obtained under regulation 26 is retained with the transfer.

(2) A financial institution referred to in subregulation (1) shall, where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, keep a record of all the information received from the ordering or other intermediary financial institution in accordance with section 32 of the Act.

(3) A financial institution referred to in subregulation (1) shall take reasonable measures to identify cross-border wire transfer that lack required originator or beneficiary information under regulation 25.

(4) The measures referred to in subregulation (3) shall be consistent with straight-through processing.

(5) For the purposes of this regulation, "straight-through processing" means payment transactions that are conducted electronically without the need for manual intervention.

(6) A financial institution referred to in subregulation (1) shall implement policies and procedures which have regard to risks identified to determine when to —

- (a) execute;
- (b) reject; or
- (c) suspend,

a wire transfer that is not accompanied by information required under regulation 26 (1) and take appropriate follow-up action.

28. (1) A financial institution that receives a wire transfer as a beneficiary financial institution shall —

- (a) verify the identity of the beneficiary before undertaking a wire transfer where such identity was not previously verified, and maintain such information in accordance with section 32 of the Act; and
- (b) take reasonable measures, including post-event monitoring or real-time monitoring, where feasible, to identify cross border wire transfer that lack the required originator or beneficiary information.

(2) A financial institution referred to under subregulation (1) shall implement policies and procedures which have regard to risks identified to determine when to —

- (a) execute;
- (b) reject; or
- (c) suspend,

a wire transfer that is not accompanied by information required under regulation 26 (1) and take appropriate follow-up action.

Obligations of financial institutions that receive wire transfer

PART VII — *Compliance Programmes and Group Wide Programmes*

29. (1) A specified party shall adopt, develop and implement a programme which ensures compliance with obligations of the specified party under the Act and these Regulations.

(2) Subject to regulations 29 and 30, a specified party shall adopt, develop and implement as part of the compliance programme referred to in subregulation (1), internal rules which —

- (a) confirm the responsibility of the management of the specified party in respect of compliance with the Act and the internal rules;
- (b) provide for the necessary procedures to ensure that customers are identified and the required particulars concerning the identities are verified;
- (c) provide for the necessary procedures including effective ongoing monitoring systems to enable staff to recognise potentially suspicious and unusual transactions or series of transactions and to report such suspicious transactions in terms of these Regulations;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning record keeping are complied with;
- (e) provide for disciplinary steps to be taken against the relevant staff members for non-compliance with the internal rules; and
- (f) take into account any guidance notes concerning duties that may apply to the specified party.

(3) Where a specified party has employees, agents or persons authorised to act on its behalf in the programme referred to in subregulation (1), the specified party shall furthermore include as far as practicable, an ongoing compliance training programme for those employees, agents or persons to ensure that they are able to comply with the duties of the specified party.

(4) A specified party that designates a compliance officer under section 14 (1) (a) of the Act shall take reasonable steps to ensure that the compliance officer has training and resources to discharge his or her obligations, and keep records of the said training for a period stipulated in section 32 of the Act.

Compliance programmes to be implemented by specified party

- (5) A specified party shall adopt an independent audit function to ensure compliance with this regulation.
- 30.** A specified party shall have rules concerning the establishment and verification of identities which shall —
- (a) provide for the necessary processes and working methods which will ensure that the required particulars concerning the identities of the parties to a business relationship or transaction are obtained on each occasion when a business is established or a transaction is concluded with the specified party;
 - (b) provide for the steps to be taken by the relevant staff members aimed at the verification of the required particulars concerning the identities of the parties to a business relationship or transaction;
 - (c) provide for the responsibility of the management of the specified party in respect of compliance with the Act, and the internal rules regarding ascertainment and verification of identity;
 - (d) allocate responsibilities and accountability to ensure that staff duties concerning the ascertainment and verification of identities are complied with;
 - (e) provide for disciplinary steps against members concerned for non-compliance with the Act and the internal rules regarding the ascertainment and verification of identities; and
 - (f) take into account any guidance notes concerning the ascertainment and verification of identities which may apply to the specified party.
- 31.** A specified party shall have internal rules concerning the keeping of records in terms of section 31 of the Act which shall —
- (a) provide for the necessary processes and working methods to ensure that relevant staff members of the specified party obtain the information pertaining to which records shall be kept on each occasion when a business relationship is established or a transaction is concluded with the specified party;
 - (b) provide for the responsibility of the management of the specified party in respect of compliance with the Act and internal rules regarding the keeping of records;
 - (c) allocate responsibilities and accountability to ensure that requirements concerning the keeping of records are complied with;
 - (d) provide for disciplinary steps against members of staff concerned for non-compliance with the internal rules regarding the keeping of records;
 - (e) provide for the necessary processes and working methods to ensure that the accuracy and the integrity of the records is maintained for the entire period for which they must be kept;
 - (f) provide for the necessary processes and working methods to ensure that access required or authorised under the Act by the relevant staff members to the records can be obtained without undue hindrance; and
 - (g) take into account any guidance notes concerning the keeping of records which may apply to the specified party.
- 32.** A specified party or accountable institution shall have rules concerning the reporting of suspicious and unusual transactions which shall —
- (a) provide for the necessary processes and working methods which will ensure that suspicious transactions are reported without undue delay;

Internal rules concerning ascertainment and verification of identities

Internal rules concerning keeping of records

Internal rules concerning reporting of suspicious transactions

- (b) provide for the necessary processes and working methods to enable staff to recognise potentially suspicious transactions or series of transactions;
- (c) provide for the responsibility of the management of the specified party or accountable institution in respect of compliance with the Act and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the reporting of suspicious transactions are complied with;
- (e) provide for disciplinary steps against members concerned for non-compliance with the internal rules regarding the reporting of suspicious and unusual transactions; and
- (f) take into account any guidance notes concerning the reporting of suspicious transactions which may apply to the specified party or accountable institution.

33. (1) The supervisory authority shall determine whether the additional measures taken by the specified party under section 15 (9) (b) of the Act, are sufficient to counter the commission of a financial offence.

Supervisory action concerning implementation of group-wide programmes

(2) Where the supervisory authority does not consider the measures referred to in subregulation (1) to be sufficient, the supervisory authority may direct the specified party to —

- (a) not enter into a business relationship with the foreign branch or majority-owned subsidiary operating in a foreign country;
- (b) not to undertake transactions associated with risk of commission of a financial offence;
- (c) cease any operation in a particular foreign country; or
- (d) ensure that its subsidiary undertaking —
 - (i) does not enter into a business relationship with the foreign branch or majority-owned subsidiary operating in a foreign country,
 - (ii) does not undertake transactions associated with risk of commission of a financial offence, or
 - (iii) ceases any operation in a particular foreign country.

(3) The direction given under subregulation (2) shall be in writing and shall —

- (a) give details of the direction; and
- (b) state the reasons for the direction.

(4) The direction given under subregulation (2) shall come into effect on such date as the supervisory authority may appoint or if no date is so specified, then it shall come into effect on the date that it is issued.

34. For purposes of section 49 (1) (h) of the Act, a supervisory authority shall when applying consolidated group supervision —

Consolidated group supervision

- (a) understand the overall structure of the financial group and be familiar with all the material activities conducted by entities in the wider group, both domestic and cross-border;
- (b) understand and assess how group-wide money laundering and terrorism financing risks are managed;
- (c) take action when risks arising from the financial group and other entities in the wider group jeopardise the safety and soundness of the financial institution or the financial system;
- (d) review whether the oversight of a financial institution's foreign operations by a parent financial institution is adequate, having regard to the money laundering and terrorism financing risk profile and systemic importance;

- (e) ensure that there is no hindrance in host countries for the parent financial institution to have access to all the material information from foreign branches and subsidiaries;
- (f) take into account the effectiveness of supervision conducted in the host country in which the financial institution has material operations;
- (g) determine whether a financial institution's policies and processes require local management of cross-border operations to possess necessary expertise to manage such operations in a safe and sound manner, and in compliance with anti-money laundering and counter-financing of terrorism supervisory and regulatory requirements;
- (h) visit the foreign offices of the financial institution, periodically, the frequency of which shall be determined by the money laundering and terrorism financing risk profile and systemic importance of the foreign operation; and
- (i) meet the host supervisor during visits referred to in paragraph (h).
- (j) have a policy for assessing whether the super authority needs to conduct an on-site examination of a financial institution's foreign operations, or require additional reporting; and
- (k) have the power and resources to conduct on-site examinations referred to in paragraph (j)

PART VIII — *Miscellaneous*

Powers of
examination

- 35.** (1) In order to carry out an examination of records as contemplated under section 36 of the Act, an examiner of the Agency or supervisory authority may —
- (a) at any time during normal office hours without previous notice, enter any premises occupied by a specified party or accountable institution and require production to him or her of any or all the specified party's or accountable institution's securities, books, records, accounts or documents;
 - (b) search any premises occupied by a specified party or accountable institution for any moneys, securities, books, records, accounts or documents;
 - (c) open or cause to be opened any strong room, safe or other container in which it is suspected that any moneys, securities, books, records, accounts or documents of a specified party or accountable institution are kept;
 - (d) examine and make copies of and extracts from any securities, books, records, accounts and documents of a specified party or accountable institution or, against a full receipt issued by the Agency or supervisory authority for such securities, books, accounts or documents and remove them temporarily from the premises of the specified party or accountable institution for that purpose;
 - (e) require an explanation of any entries in the books, records, accounts or documents of a specified party or accountable institution;
 - (f) against a full receipt issued by the Agency or supervisory authority, seize any securities, books, records, accounts or documents of a specified party or accountable institution which in his or her opinion may serve evidence for an offence or irregularity; and
 - (g) retain any such seized securities, books, records, accounts or documents for as long as they may be required for criminal or other proceedings.

(2) A person shall when requested under subregulation (1) by the Agency or supervisory authority to do so, produce every security, book, record, account or document of a specified party or accountable institution to which such person has access, and shall, at the request of the Agency or supervisory authority, provide any information at such person's disposal relating to the affairs of the specified party or accountable institution.

(3) The Agency or supervisory authority may further inspect the securities, books, records, accounts or documents of any person, partnership or company —

- (a) where the Agency or supervisory authority has reason to believe that a specified party or accountable institution whose affairs are being inspected has or had a direct or indirect interest in or in the business of the person, partnership or company;
- (b) where the Agency or supervisory authority has reason to believe that the person, partnership or company has or had a direct or indirect interest in the business of a specified party or accountable institution; and
- (c) where the Agency or supervisory authority considers it necessary for a proper inspection of the affairs of a specified party or accountable institution that those securities, books, records, accounts or documents be inspected, and the provisions of subregulations (1) and (2) shall with such modifications as may be necessary, apply in respect of an inspection under this subregulation:

(4) For the purposes of subregulation 3(b), a person who holds shares as a nominee or in trust for another person in a specified party or accountable institution shall be considered to have an interest in the specified party or accountable institution and shall upon request of the Agency or supervisory authority disclose the name of that other person.

(5) A lawful representative of a specified party or accountable institution of which the securities, books, records, accounts or documents have been retained under subregulation (1) (g), may examine, make entries in and make extracts from such securities, books, records, accounts or documents during office hours and under supervision as the Agency or supervisory authority may consider necessary.

(6) Where securities, books, records, accounts or documents of a specified party or accountable institution have been seized under subregulation (1) (f), the specified party or accountable institution may make an application to a magistrate's court for a variation order under the Proceeds and Instruments of Crime Act.

36. A certificate issued by Agency in terms of section 56 of the Act shall be in Form D set out in the Schedule.

Certificate
issued by
Agency

37. In proceedings against a specified party, or accountable institution or a person for an offence under these Regulations, it shall be a defence for a specified party, or accountable institution or a person to show that it took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations.

Defence

38. The Financial Intelligence Regulations are hereby revoked.

Revocation of
S.I. No. 104 of
2019

SCHEDULE

FORM A

Authority to act on behalf of another
(reg. 4(5))

I.....of Identity Number/Passport No.....being of sober and sound mind and acting wilfully do hereby appoint.....of Identity Number/Passport No..... to act for or on my behalffrom until.....

This appointment is executed for the purpose of expediting the transaction of all investment affairs of mine and to permit action in my name and on my behalf with respect to my financial transactions or my property during this period of appointment.

I confer power on my representative to do all things deemed necessary or proper to carry out the provisions and intent of this appointment or carry out including but not limited to the following powers, all of which may be exercised from time to time at his or her discretion and with respect to.....in which I now or hereafter have any interest.

Thus signed on thisday of.....20.....at.....

Witness

1..... Signature.....

2..... Signature.....

FORM B
Cash Transaction Report
(reg. 20 (2))



CASH TRANSACTION REPORT OF P10 000 OR MORE

A cash transaction equal to or in excess of P10 000 is reportable to the Financial Intelligence Agency under the *Financial Intelligence Act*

Report Reference No. _____
Date of Report: ___/___/___

INSTRUCTIONS FOR COMPLETING THE REPORT FORM:

- Complete as much of this form as possible, providing clear and accurate information
- All fields are mandatory, if you are unable to answer the question or it isn't relevant please indicate with Not Applicable (N/A)
- Complete the form in black ink and CAPITAL LETTERS
- Mark appropriate boxes with a cross (X)
- For detailed instructions on how to complete this form please refer to guidelines issued by the FIA
- A report must be submitted **within 5 days**

Send completed forms by Post to:

The Director General
Financial Intelligence Agency
Private Bag 0190
Gaborone
Botswana

or fax to: +267 3905742

PART A: DETAILS OF THE ACCOUNT / PRODUCT / PERSON / ORGANISATION TO WHICH THE CASH TRANSACTION RELATES

| SECTION 1: DETAILS OF THE ACCOUNT / PRODUCT | | | | | | | | | | | | | | | | | | | |
|----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Account name and /or title | <table border="1" style="width: 100%; height: 40px; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td> </tr> </table> | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| Account number/ Reference number | <table border="1" style="width: 100%; height: 40px; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td><td style="width: 10%;"></td> </tr> </table> | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|-------|------|--|--|--|--|--|--|--|--|
| Identification document type | | | | <input type="checkbox"/> National ID card <input type="checkbox"/> Passport | | | | | | | | | | | |
| Identification number | | | | <table border="1"> <tr> <td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> </table> | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| Identification issuer | | | Place and country of issue | | | | | | | | | | | | |
| Identification issue date | Day | Month | Year | Expiry date | Day | Month | Year | | | | | | | | |
| Physical address Street number and name Name of ward/suburb/city /town /Village name District Country (if overseas) | | | | <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table> | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| Telephone /Cell/email details | | | | | | | | | | | | | | | |
| Date of birth/ incorporation/ Registration | Day | Month | | Year | Place of birth/ incorporation/ registration | | | | | | | | | | |
| Employment/industry type | | | | | | | | | | | | | | | |
| Employer details Name of employer Street number and name Name of ward / suburb / city / town Village name District Country (if overseas) | | | | <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table> | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | |
| If the account owner is an individual, please specify | | <input type="checkbox"/> Male <input type="checkbox"/> Female | | Country of citizenship | | | | | | | | | | | |
| Nature of person on whose behalf the transaction was conducted | | | | <input type="checkbox"/> Account owner <input type="checkbox"/> Authorised agent <input type="checkbox"/> Employer Other _____ | | | | | | | | | | | |

| | | |
|-------------------------------------------------------------------------------------------------------------|--|--------------------------------------|
| SECTION 3: DETAILS OF THE PERSON CONDUCTING THE TRANSACTION (IF DIFFERENT FROM ACCOUNT OWNER/HOLDER) | | |
| Given name(s) or title(s) | | Surname |
| Other known name(s)/alias(es) | | |
| Business / Company name | | Business/Company registration number |

C.134

| | | | | | | | | | | | | | | | | | | | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------|----------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Identification document type | <input type="checkbox"/> National ID card <input type="checkbox"/> Passport | | | | | | | | | | | | | | | | | | | | | | | |
| Identification number | <table border="1"> <tr> <td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> </table> | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| Identification issuer | | | | Place and Country of issue | | | | | | | | | | | | | | | | | | | | |
| Identification issue date | | | | Expiry date | | | | | | | | | | | | | | | | | | | | |
| Physical address Name of employer Street number and name Name of ward / suburb / city / town Village name District Country (if overseas) | <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table> | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| Telephone /Cell/Email details | | | | | | | | | | | | | | | | | | | | | | | | |
| Date of birth | Day | Month | Year | Place of birth | | | | | | | | | | | | | | | | | | | | |
| Gender | <input type="checkbox"/> Male <input type="checkbox"/> Female | | Country of citizenship | | | | | | | | | | | | | | | | | | | | | |
| Details of physical profile | <input type="checkbox"/> Scar on face <input type="checkbox"/> Walked with a limp <input type="checkbox"/> Dirty/heavily worn clothing <input type="checkbox"/> Tattoo(s) Other _____ | | | | | | | | | | | | | | | | | | | | | | | |

SECTION 4: DETAILS OF THE BENEFICIARY CUSTOMER (IF APPLICABLE)

| | | | | | | | | | | | | | | | | | | | | | | | | |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|---------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Name of other specified party involved | | | | | | | | | | | | | | | | | | | | | | | | |
| Beneficiary account number (if known) | <table border="1"> <tr> <td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> </table> | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| Given name(s) or title(s) | | | | Surname | | | | | | | | | | | | | | | | | | | | |
| Other known name(s)/alias(es) | | | | | | | | | | | | | | | | | | | | | | | | |
| Business / Company name | | | | Business /Company registration number | | | | | | | | | | | | | | | | | | | | |
| Identification document type | <input type="checkbox"/> National ID card <input type="checkbox"/> Passport <input type="checkbox"/> Other photographic ID | | | | | | | | | | | | | | | | | | | | | | | |
| Identification number | <table border="1"> <tr> <td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> </table> | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| Identification issuer | | | | Place of issue | | | | | | | | | | | | | | | | | | | | |
| Identification issue date | | | | Expiry date | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------|---------------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|
| Physical address Name of employer Street number and name Name of ward/suburb/city/town Village name District Country (if overseas) | | | | | | | | | | | | | | | | |
| Telephone /Cell/Email details | | | | | | | | | | | | | | | | |
| Date of birth / incorporation/ registration | Day | Month | Year | Place of birth/ incorporation/ registration | | | | | | | | | | | | |
| If the customer is an individual, please specify | <input type="checkbox"/> Male <input type="checkbox"/> Female | | | Country of citizenship | | | | | | | | | | | | |
| SECTION 5: DETAILS OF ANY OTHER PARTY TO WHICH THE CASH TRANSACTION RELATES | | | | | | | | | | | | | | | | |
| Given name(s) or title(s) | | | | Surname | | | | | | | | | | | | |
| Other known name(s)/alias(es) | | | | | | | | | | | | | | | | |
| Business / Company name | | | | Business / Company registration number | | | | | | | | | | | | |
| Person type | <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Association <input type="checkbox"/> Trust <input type="checkbox"/> Government body <input type="checkbox"/> Registered body Other _____ | | | | | | | | | | | | | | | |
| Nature of relationship to the transaction e.g. conducted the transaction with person of interest | | | | | | | | | | | | | | | | |
| Identification document type | <input type="checkbox"/> National ID card <input type="checkbox"/> Passport | | | | | | | | | | | | | | | |
| Identification number | <table border="1"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table> | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | |
| Identification issuer | | | | Place of issue | | | | | | | | | | | | |
| Identification issue date | | | | Expiry date | | | | | | | | | | | | |
| Physical address Name of employer Street number and name Name of ward/suburb/city /town Village name District Country (if overseas) | | | | | | | | | | | | | | | | |

C.136

| | | | | | | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------|-----------------------------------------------|--|--|--|--|--|--|--|
| Telephone / Cell / Email details | | | | | | | | | | | |
| Date of birth/incorporation/registration | Day | Month | Year | Place of birth/ incorporation/registration | | | | | | | |
| Employment/industry type | | | | | | | | | | | |
| Employer details Name of employer Street number and name Name of ward/suburb/city/town Village name District Country (if overseas) | <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table> | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| If the customer is an individual, please specify | <input type="checkbox"/> Male <input type="checkbox"/> Female | | Country of citizenship | | | | | | | | |

PART B: TRANSACTION DETAILS

| | | | | | | | | | | | | | | | | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------|---------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Amount of transaction and currency of transaction | <table border="1"> <tr> <td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> </table> | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| Date of transaction | Day | Month | Year | Time of transaction | | | | | | | | | | | | | | | | | |
| Name and location of specified party branch/office where the transaction was conducted Branch/office identification number Name of specified party Name of ward/suburb/city/town Village name District Country (if overseas) | <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table> | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| Type of transaction | <input type="checkbox"/> Account opening <input type="checkbox"/> Telegraphic transfer <input type="checkbox"/> Account deposit/withdrawal <input type="checkbox"/> Property transfer <input type="checkbox"/> Negotiable instruments <input type="checkbox"/> Disposal of securities <input type="checkbox"/> Bet placed <input type="checkbox"/> Remittance <input type="checkbox"/> E-currency transfer <input type="checkbox"/> Purchase of traveller's cheques Other _____ | | | | | | | | | | | | | | | | | | | | |
| Type of funds/payment instrument transacted | | | | | | | | | | | | | | | | | | | | | |

C.140

| | | | | | | | | | | | | | | | | | | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------|------------------------------------------------------------------------|-----|-------|------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Account holder type | <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Association <input type="checkbox"/> Trust <input type="checkbox"/> Government body <input type="checkbox"/> Registered body Other _____ | | | | | | | | | | | | | | | | | | | | | | |
| Nature of relationship to Bank Reporting Entity | | | | | | | | | | | | | | | | | | | | | | | |
| Is the relationship current or historical? | <input type="checkbox"/> Current <input type="checkbox"/> Historical | | | Client number – provided by your <input type="checkbox"/> organisation | | | | | | | | | | | | | | | | | | | |
| Identification document type | <input type="checkbox"/> National ID card | | | <input type="checkbox"/> Passport | | | | | | | | | | | | | | | | | | | |
| Identification number | <table border="1"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table> | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| Identification issuer | | | | Place of issue Country of issue | | | | | | | | | | | | | | | | | | | |
| Identification issue date | Day | Month | Year | Expiry date | Day | Month | Year | | | | | | | | | | | | | | | | |
| Physical address Street number and name Name of ward/suburb/city/town/Village name District Country (if overseas) | <table border="1"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table> | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| Telephone /Cell /email details | | | | | | | | | | | | | | | | | | | | | | | |
| Date of birth /incorporation/ Registration | Day | Month | Year | Place of birth/ incorporation/ registration | | | | | | | | | | | | | | | | | | | |
| Employment/industry type/ Other | | | | | | | | | | | | | | | | | | | | | | | |
| Employer details Name of employer Street number and name Name of ward / suburb / city / town Village name District Country (if overseas) | <table border="1"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table> | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | |
| If the account owner is an individual, please specify | <input type="checkbox"/> Male <input type="checkbox"/> Female | | | Country of citizenship | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------------------------------------|------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Nature of person on whose behalf the transaction was conducted | <input type="checkbox"/> Account owner <input type="checkbox"/> Authorised agent <input type="checkbox"/> Employer Other _____ | | | | | | | | | | | | | | | | |
| SECTION 3: DETAILS OF THE PERSON CONDUCTING THE TRANSACTION (IF DIFFERENT FROM ACCOUNT OWNER/HOLDER) | | | | | | | | | | | | | | | | | |
| Given name(s) or title(s) | | | | Surname | | | | | | | | | | | | | |
| Other known name(s)/ alias(es) | | | | | | | | | | | | | | | | | |
| Business / Company name | | | Business/Company registration number | | | | | | | | | | | | | | |
| Identification document type | <input type="checkbox"/> National ID card <input type="checkbox"/> Passport | | | | | | | | | | | | | | | | |
| Identification number | <table border="1" style="width: 100%; height: 20px;"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table> | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| Identification issuer | | | | Place of issue | | | | | | | | | | | | | |
| Identification issue date | | | | Expiry date | | | | | | | | | | | | | |
| Physical address Name of employer Street number and name Name of ward/suburb/ city/town Village name District Country (if overseas) Source of wealth | <table border="1" style="width: 100%; height: 100px;"> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> <tr><td></td></tr> </table> | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| Telephone/Cell /Email details | | | | | | | | | | | | | | | | | |
| Date of birth | Day | Month | Year | Place of birth | | | | | | | | | | | | | |
| Gender | <input type="checkbox"/> Male <input type="checkbox"/> Female | | | Country of citizenship | | | | | | | | | | | | | |
| Details of physical profile | <input type="checkbox"/> Scar on face <input type="checkbox"/> Walked with a limp <input type="checkbox"/> Dirty/heavily worn clothing <input type="checkbox"/> Tattoo(s) Other _____ | | | | | | | | | | | | | | | | |
| SECTION 4: DETAILS OF THE BENEFICIARY CUSTOMER (IF APPLICABLE) | | | | | | | | | | | | | | | | | |
| Name of other institution involved | | | | | | | | | | | | | | | | | |
| Beneficiary account number (if known) | <table border="1" style="width: 100%; height: 20px;"> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table> | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | |
| Given name(s) or title(s) | | | | Surname | | | | | | | | | | | | | |
| Other known name(s)/alias(es) | | | | | | | | | | | | | | | | | |
| Business / Company name | | | Business / Company registration number | | | | | | | | | | | | | | |

C.142

| | | | | | | | | | | | | | | | | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|---------------------------------------|--------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Identification document type | <input type="checkbox"/> National ID card <input type="checkbox"/> Passport <input type="checkbox"/> Other photographic ID | | | | | | | | | | | | | | | | | | |
| Identification number | <table border="1" style="width:100%; height:20px;"> <tr> <td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td> </tr> </table> | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| Identification issuer | | | Place and Country of issue | | | | | | | | | | | | | | | | |
| Identification issue date | | | Expiry date | | | | | | | | | | | | | | | | |
| Physical address Name of employer Street number and name Name of ward/suburb/city /town Village name District Country (if overseas) | <table border="1" style="width:100%; height:100px;"> <tr><td style="height:20px;"></td></tr> <tr><td style="height:20px;"></td></tr> <tr><td style="height:20px;"></td></tr> <tr><td style="height:20px;"></td></tr> <tr><td style="height:20px;"></td></tr> <tr><td style="height:20px;"></td></tr> <tr><td style="height:20px;"></td></tr> </table> | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| Telephone/Cell/Email details | | | | | | | | | | | | | | | | | | | |
| Date of birth/incorporation /registration | Day | Month | Year | Place of birth/incorporation/ registration | | | | | | | | | | | | | | | |
| If the customer is an individual, please specify | <input type="checkbox"/> Male <input type="checkbox"/> Female | | Country of citizenship | | | | | | | | | | | | | | | | |
| SECTION 5: DETAILS OF ANY OTHER PARTY TO WHICH THE SUSPICIOUS TRANSACTION RELATES | | | | | | | | | | | | | | | | | | | |
| Given name(s) or title(s) | | | Surname | | | | | | | | | | | | | | | | |
| Other known name(s)/alias(es) | | | | | | | | | | | | | | | | | | | |
| Business /Company name | | | Business/ Company registration number | | | | | | | | | | | | | | | | |
| Person type | <input type="checkbox"/> Individual <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Association <input type="checkbox"/> Trust <input type="checkbox"/> Government body <input type="checkbox"/> Registered body Other _____ | | | | | | | | | | | | | | | | | | |
| Nature of relationship to suspicious transaction e.g. conducted the transaction with person of interest | | | | | | | | | | | | | | | | | | | |
| Identification document type | <input type="checkbox"/> National ID card | | <input type="checkbox"/> Passport | | | | | | | | | | | | | | | | |
| Identification number | <table border="1" style="width:100%; height:20px;"> <tr> <td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td><td style="width:12.5%;"></td> </tr> </table> | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | |
| Identification issuer | | | Place and Country of issue | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------|------------------------|---------------------------------------------|--|--|--|--|--|--|--|
| Identification issue date | | Expiry date | | | | | | | | | |
| Physical address Name of employer Street number and name Name of ward / suburb / city / town Village name District Country (if overseas) | <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table> | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Telephone/Cell / Email details | | | | | | | | | | | |
| Date of birth/ incorporation/ registration | Day | Month | Year | Place of birth/ incorporation/ registration | | | | | | | |
| Employment/ industry type | | | | | | | | | | | |
| Employer details Name of employer Street number and name Name of ward/ suburb /city/town Village name District Country (if overseas) | <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table> | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| If the customer is an individual, please specify | <input type="checkbox"/> Male <input type="checkbox"/> Female | | Country of citizenship | | | | | | | | |

PART C: TRANSACTION DETAILS

| | | | | | | | | | | | | | | | | | | | | | |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------|---------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| Amount of transaction and currency of transaction | <table border="1"> <tr> <td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> </table> | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| Date of transaction | Day | Month | Year | Time of transaction | | | | | | | | | | | | | | | | | |

C.144

| | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------|-----|-------|-------|
| Name and location of institution branch/office where the transaction was conducted Branch/office identification number Name of institution Name of ward / suburb /city /town Village name District Country (if overseas) | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Has the suspicion been formed as a result of multiple transactions? | <input type="checkbox"/> Yes <input type="checkbox"/> No | | Period of transactions: From | Day | Month | Year |
| Has the suspicious activity had a material impact on the financial soundness of the Bank? | <input type="checkbox"/> Yes (if more space is required please add in the section 2 narrative or on an additional page) <input type="checkbox"/> No | | | To | Day | Month |
| Type of transaction | <input type="checkbox"/> Account opening <input type="checkbox"/> Telegraphic transfer <input type="checkbox"/> Account deposit/withdrawal <input type="checkbox"/> Property transfer <input type="checkbox"/> Negotiable instruments <input type="checkbox"/> Disposal of securities <input type="checkbox"/> Bet placed <input type="checkbox"/> Remittance <input type="checkbox"/> E-currency transfer <input type="checkbox"/> Purchase of traveller's cheques Other _____ | | | | | |
| Type of funds/payment instrument transacted | | | | | | |
| Transaction channel/mechanism | <input type="checkbox"/> Face-to-face/in person <input type="checkbox"/> Electronic/internet <input type="checkbox"/> Telephone instruction <input type="checkbox"/> Other _____ | | | | | |
| Status of transaction | <input type="checkbox"/> Complete <input type="checkbox"/> Suspended <input type="checkbox"/> Processing | | | | | |
| Remarks/comments/explanations made by the customer regarding why the transaction was conducted | | | | | | |

PART D: REASON FOR SUSPICION

| | |
|------------------------------------------------------------------------------|------------------------------------------------------------|
| SECTION 1: IDENTIFY YOUR CATEGORY OF SUSPICION | |
| <input type="checkbox"/> Suspicious behaviour | <input type="checkbox"/> ATM/cheque fraud |
| <input type="checkbox"/> Large or unusual cash deposits/withdrawal | <input type="checkbox"/> Unusual business/account activity |
| <input type="checkbox"/> Irregular or unusual international banking activity | <input type="checkbox"/> Known/suspected criminal |
| <input type="checkbox"/> Inconsistent with customer profile | <input type="checkbox"/> Avoiding reporting obligations |
| <input type="checkbox"/> Large or unusual inward/outward remittance | <input type="checkbox"/> Internal fraud |
| <input type="checkbox"/> Unusually large foreign currency transaction | <input type="checkbox"/> Counterfeit currency |
| <input type="checkbox"/> Country/jurisdiction risk | <input type="checkbox"/> False name/identity or documents |
| Other _____ | |

SECTION 2: DESCRIPTION NARRATIVE

Please describe clearly and succinctly the factors or unusual circumstances that led to the suspicion of money laundering or terrorism financing activity. Provide all relevant details and explain what you found suspicious.
 Note: If required additional pages can be added to this report, initialled by the authorised individual.

PART E: DETAILS OF ACTION ALREADY TAKEN BY YOUR INSTITUTION

| | | | | | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|--|--|--|
| Has a law enforcement agency been contacted in regards to this suspicion? | <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | | | |
| If yes, please provide details of the law enforcement agency contacted. Name of agency Physical: Street number and name Name of ward/suburb/city /town Village name District Name of law enforcement agency contact person Contact phone | <table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table> | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| Has any other action been taken in regards to this suspicious activity? | <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | | | |
| If yes, please provide details. | | | | | | | | |

PART F: ADDITIONAL AVAILABLE INFORMATION

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| Please provide a list of additional documents that your institution has available and may be able to provide to the FIA or another law enforcement agency upon request to assist with investigation of this suspicious transaction. | |
| Is an image or Closed Circuit Television (CCTV) of the suspicious transaction available | <input type="checkbox"/> Yes <input type="checkbox"/> No |

SECTION 1: DETAILS OF THE BANK

| | |
|--------------------------------|--|
| Full name of Bank | |
| Bank identification number | |
| Primary regulatory institution | |

PART G: DETAILS OF THE BANK AND PERSON LODGING THE REPORT

| | |
|----------------------------------------------------------------------------------|--|
| SECTION 2: DETAILS OF THE PERSON MAKING THE SUSPICIOUS TRANSACTION REPORT | |
| Person/officer name | |

C.146

| | | |
|------------------------------------------------|-------|-------|
| Person/officer position title | | |
| Person/officer contact details | Phone | Email |
| Signature/declaration of the reporting officer | | |

For Official Use Only

END OF REPORT

FORM D

Certificate issued by Financial Intelligence Agency

(reg.36)

Summary of report

.....
.....
.....

- (a) Reporting entity.....
- (b) Type or nature of report:
 - (i) STR (Suspicion Transaction Report)
 - (ii) LCT (Large Cash Transaction)
 - (iii) EFT (Electronic Funds Transfer)
- (c) Date of reporting
- (d) Particulars of the reporting officer.....
Designation.....
- (e) Annexures.....
- (f) Mode of reporting.....
 - (i) Internet Based Reporting Portal
 - (ii) CD
 - (iii) STR Form

.....
Date stamp/Signature of Director General / Time
Designated office

MADE this 25th day of February, 2022.

PEGGY O. SERAME,
Minister of Finance and Economic Development.

C.148

Statutory Instrument No. 15 of 2022

CRIMINAL PROCEDURE AND EVIDENCE (CONTROLLED INVESTIGATIONS) ACT
(Act No. 14 of 2022)

**CRIMINAL PROCEDURE AND EVIDENCE (CONTROLLED INVESTIGATIONS)
ACT (DATE OF COMMENCEMENT) ORDER, 2022**
(Published on 25th February, 2022)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Commencement of Act No. 14 of 2022

IN EXERCISE of the powers conferred on the Minister of Defence, Justice and Security by section 1 of the Criminal Procedure and Evidence (Controlled Investigations) Act, the following Order is hereby made —

- | | |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Citation | 1. This Order may be cited as the Criminal Procedure and Evidence (Controlled Investigations) Act (Date of Commencement) Order, 2022. |
| Commencement of Act No. 14 of 2022 | 2. The Criminal Procedure and Evidence (Controlled Investigations) Act shall come into operation on 25th February, 2022. |

MADE this 25th day of February, 2022.

KAGISO THOMAS MMUSI,
*Minister of Defence, Justice and
Security.*

Statutory Instrument No. 16 of 2022

COLLECTIVE INVESTMENT UNDERTAKINGS (AMENDMENT) ACT
(Act No. 23 of 2021)

COLLECTIVE INVESTMENT UNDERTAKINGS (AMENDMENT) (DATE
OF COMMENCEMENT) ORDER, 2022
(Published on 25th February, 2022)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Commencement of Act No. 23 of 2021

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 1 of the Collective Investment Undertakings (Amendment) Act, 2021, the following Order is hereby made —

1. This Order may be cited as the Collective Investment Undertakings (Amendment) (Date of Commencement) Order, 2022. Citation
2. The Collective Investment Undertakings (Amendment) Act, 2021, shall come into operation on 28th February, 2022. Commencement of Act No. 23 of 2021

MADE this 25th day of February, 2022.

PEGGY O. SERAME,
*Minister of Finance and Economic
Development.*

Statutory Instrument No. 17 of 2022

COMPANIES (AMENDMENT) ACT
(Act No. 7 of 2022)

**COMPANIES (AMENDMENT) (SPECIFIED SECTIONS
COMMENCEMENT DATE) ORDER, 2022**
(Published on 25th February, 2022)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Commencement of specified sections of Act No. 7 of 2022

IN EXERCISE of the powers conferred on the Minister of Investment, Trade and Industry by section 1 of the Companies (Amendment) Act, 2022, the following Order is hereby made —

Citation **1.** This Order may be cited as the Companies (Amendment) (Specified Sections Commencement Date) Order, 2022.

Commencement of specified sections of Act No. 7 of 2022 **2.** The following sections of the Companies (Amendment) Act, shall come into operation on 25th February, 2022 —

- (a) sections 1 to 2, save for the following definitions —
 - (i) “Collateral Registry”, and
 - (ii) “security interest”;
- (b) sections 3 to 16 inclusive; and
- (c) sections 18 to 25 inclusive.

MADE this 25th day of February, 2022.

MABUSE MOMPATI PULE,
*Acting Minister of Investment, Trade and
Industry.*

Statutory Instrument No. 18 of 2022

VIRTUAL ASSETS ACT
(Act No. 3 of 2022)

VIRTUAL ASSETS REGULATIONS, 2022
(Published on 25th February, 2022)

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Application for licence
3. Issue of licence
4. Minimum financial requirements
5. Human and technology resources
6. Virtual asset business to establish proper markets
7. Business and default rules
8. Systems and controls
9. Transaction recording procedures
10. Safeguarding and administering virtual assets
11. Customer protection
12. Ongoing compliance
13. Ongoing obligations
14. Addressing complaints by customers
15. Deterrence of market abuse
16. Promoting and maintaining standards
17. Disclosure of information to the Regulatory Authority
18. False and misleading statements

SCHEDULE

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 36 of the Virtual Assets Act, the following Regulations are hereby made —

1. These Regulations may be cited as the Virtual Assets Regulations, 2022. Citation
2. (1) In accordance with section 10 of the Act, a person shall not carry out or participate in a virtual asset business unless such person holds a virtual asset service provider licence or issuer of initial token offerings licence issued by the Regulatory Authority. Application for licence
- (2) An application for a licence to carry out business as a virtual asset service provider or issuer of initial token offering shall be made in Form 1 set out in the Schedule.
- (3) An application for a licence under subregulation (2) shall be accompanied by —
 - (a) full personal details, qualifications, experience and economic interests of the applicant's —
 - (i) organiser,
 - (ii) issuer,
 - (iii) founder,
 - (iii) investor,
 - (iv) security holder, and
 - (v) manager and other senior officers;

- (b) full personal details, qualifications, experience, economic interests and occupation of the applicant's —
 - (i) directors, if the applicant is a legal person,
 - (ii) shareholders, if the applicant is a legal person, and
 - (iii) beneficial owner;
- (c) constitution of the applicant and other incorporating documents, if the applicant is a legal person;
- (d) a business plan which shall *inter alia* set forth the —
 - (i) financial and operational projections of the virtual asset business,
 - (ii) systems and controls of the virtual asset business,
 - (iii) internal control procedures of the applicant, and
 - (iv) proposed organisational structure, staffing requirements and the powers and duties of office bearers;
- (e) copies of contracts and arrangements for oversight activities as the Regulatory Authority may require;
- (f) evidence of the minimum financial requirements as required in regulation 4;
- (g) evidence of human and technology resources sufficient to efficiently operate and manage the virtual asset business as required in regulation 5, including the applicant's principal business address and website;
- (h) business rules, as required in regulation 7, for virtual token exchange, initial token offerings or payment service utilising virtual assets adequate to ensure, as far as is reasonably practicable, that the virtual asset business will operate fairly, transparently and in an orderly way as provided in Part IV of the Act;
- (i) adequate systems and controls, in accordance with regulation 8, to maintain market integrity, including avoidance of market abuse;
- (j) the class of virtual assets intended to be traded or available for subscription;
- (k) an application fee in the amount of P5,000; and
- (l) additional requirements as contained in the Act and these Regulations, as the Regulatory Authority may direct.

(4) Any person who contravenes subregulation (1) commits an offence and shall, on conviction, be liable to the penalty provided in section 31 of the Act.

Issue of licence

3. (1) Where, on application made under regulation 2, the Regulatory Authority is satisfied that the applicant meets the requirements in section 11 of the Act, the Regulatory Authority may issue the applicant with —

- (a) a virtual asset service provider licence set out in Part A, in Form 2 of the Schedule; or
- (b) an issuer of initial token offerings licence set out in Part B, in Form 2 of the Schedule.

(2) A licence issued under this regulation may contain such conditions as the Regulatory Authority may determine.

Minimum financial requirements

4. (1) A licence holder shall have and maintain at all times minimum financial resources comprising —

- (a) cash amounts equal to one half of the estimated gross operating costs of the virtual asset business for the next 12 month period; and
- (b) such other base capital amount as may be set by the Regulatory Authority.

(2) The Regulatory Authority may increase the minimum base capital under subregulation (1) (a) as it may deem necessary depending on the risk profile of the virtual asset business.

(3) A licence holder shall have financial resources adequate with respect to the nature, size, and complexity of the virtual asset business for the purpose of guarding against the risk of failure to fulfil liabilities as they fall due.

5. (1) A licence holder shall, to the satisfaction of the Regulatory Authority, have sufficient human and technology resources to operate a virtual asset business.

Human and
technology
resources

(2) For purposes of subregulation (1), a licence holder shall satisfy the Regulatory Authority with respect to —

- (a) employing fit and proper staff, appropriately trained for the duties to be performed and trained to the standards required;
- (b) appointing a key management team with adequate levels of experience and expertise to supervise and monitor the operations of the virtual asset business; and
- (c) owning technology resources that are established and maintained in such a way as to ensure that they are secure and maintain the confidentiality of the data they contain.

(3) In considering whether a person is a fit and proper person, the Regulatory Authority shall, in accordance with section 11 (2) of the Act, have regard to —

- (a) financial status or solvency of the person;
- (b) economic interests;
- (c) relevant education, qualifications and experience;
- (d) the ability to perform the relevant functions properly, efficiently, honestly and fairly;
- (e) reputation, character, financial integrity and reliability; and
- (f) criminal record or conviction for any offence involving dishonesty or fraud.

6. A virtual asset business shall, to the satisfaction of the Regulatory Authority, establish and operate proper markets that are conducive to the economic good and that do not cause or promote instability by having —

Virtual asset
business to
establish
proper markets

- (a) a sufficiently liquid underlying cash market; and
- (b) capacity to make and take delivery of securities or underlying assets.

7. (1) A virtual asset business shall, to the satisfaction of the Regulatory Authority, have clear and fair business rules which are —

Business and
default rules

- (a) legally enforceable by purchasers and customers; and
- (b) published and made freely available.

(2) A licence holder shall have compliance procedures in place to ensure that —

- (a) the business rules in subregulation (1) are enforced;
- (b) complaints regarding its virtual asset services and appeal procedures are in place; and
- (c) where appropriate, a disciplinary action resulting in financial and other types of penalties is available.

(3) The business rules in subregulation (1) shall be approved by the Regulatory Authority.

(4) The business rules in subregulation (1) shall specify the class of virtual assets traded on or available for subscription, and requirements with respect to —

- (a) a licence holder's financial reporting, how regular reports are made and the international accounting standards or any other accounting standard accepted by the Regulatory Authority to which they comply;
- (b) auditing standards;

- (c) the licence holder's track record in terms of profit or operating history;
 - (d) any restrictions that may exist on transferability or virtual token exchange; and
 - (e) any other relevant matter deemed necessary by the Regulatory Authority.
- (5) A virtual asset business shall have default rules in place which, in the event of a purchaser or customer being or appearing to be unable to fulfil its obligations in respect of one or more contracts, enable action to be taken with respect to unsettled virtual assets transactions to which the purchaser or customer is a party.
- Systems and controls**
- 8.** (1) A licence holder shall at all times ensure that its systems and controls are adequate and suitable for the performance of a virtual asset business and appropriate to the size and nature of its operations.
- (2) The systems and controls in subregulation (1) shall be in relation to the —
- (a) transmission of information to purchasers and customers in its blockchain or using its distributed ledger technology platform;
 - (b) assessment and management of risks;
 - (c) safeguarding and administration of assets which belong to purchasers or its customers; and
 - (d) the fitness and propriety of its employees and the adequacy of the technology resources.
- (3) A licence holder shall have systems and controls in relation to the supervision and monitoring of transactions on its blockchain or trading systems.
- (4) A licence holder shall carry out regular reviews of its systems and controls.
- Transaction recording procedures**
- 9.** A licence holder shall ensure that satisfactory arrangements are made for —
- (a) recording the activity and transactions effected on or through its blockchain and distributed ledger technology platform;
 - (b) maintaining the activity and transaction records for at least seven years; and
 - (c) providing the Regulatory Authority or any competent authority with such records in a timely manner as the Regulatory Authority or competent authority may require.
- Safeguarding and administering virtual assets**
- 10.** Where a distributed ledger technology platform provides for the safeguarding and administration of assets which belong to purchasers and customers, a licence holder shall ensure that —
- (a) satisfactory arrangements are made for that purpose; and
 - (b) clear terms of agreement exist between the purchaser, customers and the licence holder in relation to the virtual asset.
- Customer protection**
- 11.** (1) A licence holder shall at all times provide safeguards to ensure customer protection to such standard as the Regulatory Authority may determine.
- (2) Without derogating from the generality of subregulation (1), a licence holder shall have business rules, procedures and an effective surveillance programme that ensure that a virtual asset business conducted on or through its distributed ledger technology platform or trading systems is conducted in an orderly manner to provide proper protection to customers, including monitoring for conduct which may amount to market abuse, financial crime or money laundering.
- Ongoing compliance**
- 12.** (1) A licence holder shall provide, to the satisfaction of the Regulatory Authority, details of how the licence holder will ensure ongoing compliance with its business rules under regulation 7.

(2) Pursuant to subregulation (1), a licence holder shall have compliance procedures in place to ensure that —

- (a) the business rules are enforced;
- (b) complaints regarding persons granted access to its distributed ledger technology platform are investigated;
- (c) appeal procedures are in place; and
- (d) where appropriate, disciplinary action and appropriate penalties are available.

13. (1) A licence holder shall at all times do all things necessary to make sure that its virtual asset services are fair, transparent, orderly and efficient for the purpose of reducing any systemic or any other type of risk that may adversely affect fair and orderly virtual token exchange or trading of the virtual assets.

Ongoing obligations

(2) A licence holder shall submit to the Regulatory Authority a report in writing, at such times as the Regulatory Authority may direct, addressing matters affecting the virtual assets business and such other matters as the Regulatory Authority may direct to be submitted.

(3) The report in subregulation (2) may include —

- (a) ongoing compliance by the licence holder with the terms of the licence;
- (b) complaints received and resolutions reached;
- (c) disciplinary matters arising and dealt with;
- (d) adequacy and performance of systems and controls;
- (e) financial matters concerning the operation of the virtual asset business; and
- (f) any other relevant matter as the Regulatory Authority may determine.

14. (1) A licence holder shall, to the satisfaction of the Regulatory Authority, have in place procedures to address complaints by purchasers, customers and users of its distributed ledger technology platform so as to ensure that due process is upheld on an ongoing basis.

Addressing complaints by customers

(2) The procedures in subregulation (1) shall include —

- (a) effective arrangements for the investigation and resolution of complaints made against the licence holder's virtual asset services;
- (b) establishing and maintaining a register of complaints made against the licence holder's virtual asset services and resolutions reached with the purchaser, customer or user.

(2) A licence holder shall keep and maintain the records of the complaints in subregulation (1) for a minimum of seven years.

15. (1) A licence holder shall have appropriate measures to identify, deter and prevent market abuse, financial crime and money laundering on and through its distributed ledger technology platform and report to the Regulatory Authority any market abuse or suspicious transaction.

Deterrence of market abuse

(2) Pursuant to subregulation (1), a licence holder shall have rules and procedures to prohibit or prevent any —

- (a) transaction intended to create a false appearance of a trading activity;
- (b) virtual token exchange or initial token offering executed for improper purposes; and
- (c) transaction intended to assist or conceal any potentially identifiable market abuse or financial crime.

16. (1) A licence holder shall, from time to time, provide to the Regulatory Authority details of how it will promote and maintain professional conduct as required under section 26 of the Act.

Promoting and maintaining standards

Disclosure of
information to
the Regulatory
Authority

False and
misleading
statements

- (2) For purposes of subregulation (1), a licence holder shall —
 - (a) take all the necessary steps to promote and maintain high standards of integrity and fair dealing in the carrying on of a virtual asset business on or through its distributed ledger technology platform or trading systems; and
 - (b) cooperate with the Regulatory Authority with regard to regulatory matters as the Regulatory may determine.
- 17.** A licence holder shall have appropriate procedures and protection for allowing employees to disclose any information to the Regulatory Authority, competent authorities or comparable bodies involved in the prevention of market abuse, financial crime or money laundering.
- 18.** (1) In accordance with section 31 of the Act, a person shall not, in connection with an application submitted to the Regulatory Authority for a licence under these Regulations —
 - (a) make a statement to the Regulatory Authority which he or she knows or ought reasonably to know is false or misleading; or
 - (b) omit to state any matter to the Regulatory Authority where he or she knows or ought reasonably to know that, because of the omission, the application is misleading.
- (2) Any person who contravenes subregulation (1) commits an offence and is liable to —
 - (a) the penalty under section 31; and
 - (b) any administrative penalty that may be imposed by the Regulatory Authority under section 33.

SCHEDULE

Form 1

APPLICATION TO BE LICENSED AS A VIRTUAL ASSET SERVICE PROVIDER OR
ISSUER OF INITIAL TOKEN OFFERINGS

(reg 2(2))

Address of applicant:

 Date 20.....

To:
 The Chief Executive Officer
 Non-Bank Financial Institutions Regulatory Office
 Private Bag 00314
 Gaborone
 Botswana

I/We, the undersigned, do hereby apply for a licence in terms of section 10 of the Virtual Assets Act (Act No. 3 of 2022) to operate a virtual asset business in Botswana.

I/we have taken note of section 31 (2) of the Virtual Assets Act regarding the consequences of giving false or misleading statements to the Regulatory Authority or falsely holding out as being licensed.

PART I – APPLICANT AND BUSINESS INFORMATION

1. Name of applicant
2. Trading name(s) of applicant
 Provide all the names if different
3. Legal status of applicant (mark with x)

| Sole ownership/ Individual | Private company | Public company | Partnership | Financial Institution | Other (specify) |
|-------------------------------|-----------------|----------------|-------------|-----------------------|-----------------|
| | | | | | |

4. Official registration number of the above legal status
5. Date of commencement of trading as a Virtual Asset Service Provider or Issuer of Initial Token Offerings (dd/mm/yy)

C.158

- 6. Financial year end (dd/mm/yy)
- 7. Income tax registration number
- 8. VAT registration number (if applicable)
- 9. Contact details of the applicant (head office, if applicable)
- 10. Physical address
- 11. Postal address
- 12. Landline telephone number
- 13. Fax number
- 14. E-mail address
- 15. Website

Note 1: Similar details to be provided if there are any branches with a different address. Provide on separate sheet of paper.

Note 2: If virtual assets are traded on another virtual token exchange in any jurisdiction, provide full details of listing and provide a list of affiliates of the applicant, indicating the nature of the relationship, businesses the affiliate is in, where the affiliate is incorporated, etc.

16. Contact details of the issuer or organiser:

- Title
- Full name(s)
- ID number:
- Telephone number (office)
- E-mail address

Note: The issuer in terms of section 2 of the Act means the person contractually responsible for issuing a virtual token. The organiser, if different from the issuer, means the person procuring the issuance of a virtual asset through the issuer. Provide a short Curriculum Vitae to show experience of both the issuer and organiser.

17. Auditor/Accountant:

- Name of firm/person
- Physical address
- Postal address
- Name of responsible person (if a firm)
- Telephone number
- Fax number
- E-mail address
- Professional registration number/practice number
- Name of Professional body registered with

18. Banker:

- Name of bank

Branch name
 Name of holder of main business account for virtual asset business

 Account number

I/we enclose an original letter from my/our bank confirming the above.

Note: If there is more than one such account due to branches or virtual tokens traded outside Botswana, provide full details.

PART II – FOUNDER(S) OF THE VIRTUAL ASSET BUSINESS

Note: The definition of a founder is provided in section 2 of the Virtual Assets Act.

19. Provide the following in respect of each of the founder(s) including the issuer, organiser and beneficial owner(s):

| First Name(s) | Surname | ID/ Passport Number | Nationality | Designation (Owners, Beneficial Owner, Directors and Senior Management) | In case of Owners and Beneficial Owners please provide percentage of ownership |
|---------------|---------|---------------------|-------------|-------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| | | | | | |
| | | | | | |
| | | | | | |

Note: Attach Curriculum Vitae for each founder and persons above, and indicate any tertiary qualifications, abbreviated employment history and specific contribution to be made in respect of the virtual asset business.

20. Provide full details for each person who is to carry out the virtual asset business on behalf of the applicant, including manager(s) or senior officer(s).

.....

21. State whether the applicant or any founder, owner, beneficial owner, issuer, organiser, director, manager or senior officer of the applicant has ever been —

- (a) disciplined, denied admission or registration, or had their registration or membership revoked by any stock exchange, virtual token exchange, regulatory or competent authority or professional association in any jurisdiction;
 Yes/No.....
- (b) declared bankrupt, convicted of a crime or been sued under any commercial, securities, company or any law concerning fraud or misrepresentation;
 Yes/No.....

C.160

- (c) involved with an application for regulatory approval in any jurisdiction where that application has been refused or withdrawn;
Yes/No.....
- (d) dismissed from any office or employment, or barred from entry into any profession or occupation;
Yes/No.....
or
- (e) compulsorily wound up or made any compromise or arrangement with creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims;
Yes/No

If you answered yes to any of the above, provide full details

.....
.....
.....

PART III – FINANCIAL STATEMENTS

22. The following financial information is hereby provided:

- (a) if the applicant has been established within six months from the date of application and the applicant has not commenced operations –
 - i. a sworn statement from the founder, issuer or organiser of the applicant confirming that the applicant has not commenced trading and that no financial statements have been produced or dividends declared,
 - ii. statement of financial position of the applicant from the date of establishment to the date of application,
 - iii. three-year financial projections of the applicant;
- (b) for all other applicants –
 - i. audited financial statements for two financial years immediately prior to the date of application or since the date of establishment, whichever is closest or equivalent to two years,
 - ii. the auditor’s report accompanying the audited financial statements,
 - iii. interim financial statements of the applicant for the prior two quarters, signed and certified by the founder, issuer or organiser to be true and complete; and
- (c) if the applicant has any founder or significant interest holder who is a legal person, for each founder or such interest holder –
 - i. audited financial statements for the two financial years immediately prior to the date of application or since the date of establishment, whichever is closest or equivalent to two years,
 - ii. the auditor’s report accompanying the audited financial statements, and
 - iii. most recent interim financial statements signed and certified by a director, manager or company secretary to be true and complete.

Note: A copy of your most recent set of financial statements must be provided

PART IV – FUNDING

23. The existing and/or intended sources of funds to be utilised in the virtual asset business are as follows:

| Type of Funding | Approximate Percentage |
|----------------------------|------------------------|
| Own funds | |
| Borrowed funds | |
| Donor funds | |
| Any other (please specify) | |

PART V – DESCRIPTION OF BUSINESS

24. Applicant must provide a description of the business (existing and/or proposed business for next two years) describing the class of virtual assets, including an indication of the total monthly cost of credit rate associated with each virtual asset, marketing methods, customer focus, geographical spread of the virtual asset business and branches, number of persons to be employed, methods to ensure compliance with statutory responsibilities, administrative procedures and control. (Use separate piece of paper).

PART VI – OPERATIONAL CAPABILITY

25. Describe briefly the system and controls to be used in the virtual asset business.

26. Provide a detailed description of the applicant’s operational capabilities, including the physical premises, cybersecurity protocols, data management systems, data protection systems, risk management systems, banking, virtual clearing, virtual custody arrangements and communication capabilities, as applicable.

27. Provide names and addresses of principal bankers, virtual custodians, virtual asset providers and other service and technical providers, as applicable.

28. Do you engage in any other activity than the virtual asset business hereby applied for?
 Yes/No.....

If yes, please provide full details of the activity

29. Are there any other ancillary products which the applicant or its holding company or subsidiary or affiliate sell, or intends to sell, in conjunction with the virtual asset business applied herewith:
 Yes/No

If yes, provide full details of the ancillary products

C.162

30. Explain the relative importance and volumes of these ancillary products in relation to the virtual asset business applied herewith

.....
.....

Provide a schematic group structure and indicate whether the entity operates as a principal or intermediary for each specific ancillary product

.....
.....
.....

PART VII – DECLARATION OF NATURAL PERSONS

This part must be completed and signed by each natural person mentioned in Part II (make additional copies if necessary).

Declaration

I/We, the undersigned, declare that the above information is true and correct to the best of our knowledge and belief and undertake to provide any other information that may be required by the Regulatory Authority.

I /We, the undersigned declare that none of us have a criminal record or conviction for any offence involving dishonesty or fraud.

I/We, the undersigned, hereby give permission to the Botswana Police Criminal Record Center to furnish the Regulatory Authority or its authorised agents with my/our previous convictions or any relevant information in their possession, including any directions by the Court for my/our detention in a mental hospital or prison.

I/We hereby indemnify the Botswana Police Criminal Center, its employees, the Regulatory Authority, its agents and its employees and hold them harmless against any claims by myself/ ourselves or any other person that may arise out of or be connected with such disclosure as well as any legal costs, including attorney and client costs.

| First Name and Surname | ID/ Passport Number | Signature | Date |
|------------------------|---------------------|-----------|------|
| | | | |
| | | | |
| | | | |

ATTACHMENTS

I/We enclose the following:

1. Non-refundable application fee of P5 000 (Five Thousand Pula);
2. All additional information as to be provided in the Application form above;
3. Identity documents, including passports and proof residence for each natural person in Part II;

4. Constitution of the company or any document by which the applicant is constituted (if applicable);
5. Certificate of Incorporation from Registrar of Companies (if applicable);
6. Copy of a document showing income tax registration number;
7. A copy of any other registration or licensing certificate (if applicable);
8. Copy of the latest financial statements of the business (if already conducting a virtual asset business) or statement of financial position (if the applicant has not commenced operations);
9. Copy of the applicant's detailed and up to date business plan, inclusive of financial and operational projections, staffing requirements, a description of the products and services offered, target market and technological requirements;
10. Copy of the applicant's written supervisory, internal controls and risk management policies and procedures;
11. Evidence that the applicant has adequate insurance and minimum base capital in accordance with regulation 4;
12. Organisational structure, including job descriptions for each office bearer; and
13. A schedule of proposed fees for services rendered by the virtual asset business.

Yours faithfully

.....

Authorised signature

GENERAL NOTES:

1. Where an answer or documentation requested above is not known or available it is essential that this be brought to the attention of, and explained to, the Regulatory Authority. Any application not fully completed will be returned to the applicant.
2. Any founder, issuer, organiser, manager or officer appointed after the approval of a license must within 30 days of such appointment complete and submit PART II and PART VII of this Form to the Regulatory Authority.
3. A prospective applicant needs to establish as a company in Botswana, if applicable, before formal application.

C.164

Form 2

LICENCE TO CARRY ON A VIRTUAL ASSET BUSINESS
(reg 3(1))

PART A

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Certificate No.</p> <p>NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY REPUBLIC OF BOTSWANA</p> <p>VIRTUAL ASSETS ACT (Act No. of 2022)</p> <p>VIRTUAL ASSET SERVICE PROVIDER LICENCE</p> <hr/> <p>This is to certify that has been duly licensed by Non-Bank Financial Institutions Regulatory Authority to carry out the business as a Virtual Asset Service Provider.</p> <p>This licence is not transferable and remains the property of the Non-Bank Financial Institutions Regulatory Authority.</p> <p>Dated this day of 20..... in Gaborone.</p> <p>Signed:..... CHIEF EXECUTIVE OFFICER</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

PART B

Certificate No.

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY
REPUBLIC OF BOTSWANA

VIRTUAL ASSETS ACT
(Act No. of 2022)

ISSUER OF INITIAL TOKEN OFFERINGS LICENCE

This is to certify that has been duly licensed by Non-Bank Financial Institutions Regulatory Authority to carry out the business as an Issuer of Initial Token Offerings.

This licence is not transferable and remains the property of the Non-Bank Financial Institutions Regulatory Authority.

Dated this day of 20..... in Gaborone.

Signed:.....
CHIEF EXECUTIVE OFFICER

MADE this 25th day of February, 2022.

PEGGY O. SERAME
*Minister of Finance and Economic
Development.*

