

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.

(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.