

BANK OF BOTSWANA (AMENDMENT) ACT, 2022

No. 24



of 2022

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An Act to amend the Bank of Botswana Act.

Date of Assent: 31.08.2022

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

Short title and commencement

1. This Act may be cited as the Bank of Botswana (Amendment) Act, 2022, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Amendment of section 2 of Cap. 55:01

2. The Bank of Botswana Act (hereinafter referred to as “the Act”), is amended in section 2 by inserting in their correct alphabetical order, the following new definitions —

““deposit” means a sum of money —

(a) paid by one person to another person denominated in Botswana Pula or any other recognised currency; and

(b) subject to an agreement in terms of which an equal amount or any part thereof may be conditionally or unconditionally repaid by the person to whom the money has been paid —

(i) with or without interest or premium,

(ii) either on demand or at specified or unspecified time, and

(iii) in circumstances agreed by or on behalf of the persons

making the payments and the person receiving such payment,

and such deposit is not referable to the provisions of property or services, other than the transmission of money by mobile telephone or electronic system or other giving of security to be rendered;

“financial institution” means —

Cap. 46:04

(a) a bank as defined under the Banking Act;

(b) a person licensed under this Act to carry out on business of buying and selling foreign exchange; or

Cap. 46:08

(c) a non-bank financial institution as defined under the Non-Bank Financial Institutions Regulatory Authority Act;

“International Financial Reporting Standards” means the most recent and applicable international accounting standards issued by the International Accounting Standards Board;

“Monetary Policy Committee” means the Committee established under section 19A; and

“ordinary revenue” means all revenue from taxes, duties, fees, rents, profits and income from any investment or undertaking by the Government and any contribution to the revenue of the Government from any statutory corporation, but shall not include loans, grants, other forms of economic aid or capital raised and the average of the annual ordinary revenues for the three financial years immediately preceding for which audited accounts are available.”.

3. The Act is amended by substituting for section 4, the following new section —

“Objectives of Bank

4. (1) The primary objective of the Bank shall be to achieve and maintain domestic price stability.
- (2) Subject to subsection (1), the Bank shall contribute to the stability of the financial system and foster and maintain a stable, sound and competitive market-based financial system.
- (3) Without prejudice to subsections (1) and (2), the Bank shall support national economic development goals.
- (4) In the attainment of the objectives set out in this section, the Bank shall have and may exercise all the powers generally conferred upon a central bank.”

Substitution of section 4 of the Act

4. The Act is amended by inserting immediately after section 4, the following new sections —

“Operational independence of the Bank

4A. The Bank shall be operationally independent in pursuit of its primary objectives, and in the performance of its functions under this Act, shall act without fear, favour or prejudice or direction of any person, authority or institution.

Functions of the Bank

- 4B. The functions of the Bank shall be to —
- (a) formulate and implement monetary policy;
- (b) formulate and implement policies to maintain financial stability;
- (c) implement the exchange rate policy;
- (d) conduct foreign exchange operations;
- (e) hold and manage the official foreign exchange reserves of Botswana;
- (f) issues and manage the currency of Botswana;
- (g) establish, promote, regulate and oversee safe, sound, efficient payment, clearing and securities settlement systems, operators and providers under this Act or any legislation;
- (h) regulate, license and supervise banks and such other financial institutions as may be specified in this Act or any legislation and impose remedial measures and administrative sanctions on banks and other financial institutions as may be specified in this Act or in the Banking Act;
- (i) act as a banker to banks and other financial institutions as the Board may decide;
- (j) provide services as banker, advisor and act as fiscal agent to the Government;
- (k) collect data and produce statistics in accordance of its mandate under this Act;
- (l) advise the Council on any potential risks to financial stability;
- (m) propose recommendations, actions or programmes for adoption by the Council;

Insertion of sections 4A, 4B and 4C in the Act

- (n) periodically issue publications about its policies, functions and operations and the achievements of its objectives; and
- (o) carry out any ancillary activities incidental to the exercise of its functions under this Act or any legislation.

Power to issue Directives, Circulars, Notices, etc.

4C. (1) The Bank shall have the power incidental or ancillary to give effect to its objectives and to carry out its functions to issue Bye-laws, directives, circulars, notices and guidelines.
 (2) A bank or a financial institution that falls under this Act shall comply with the requirement issued under subsection (1).
 (3) A person or a financial institution that fails to comply with a requirement issued by the Bank under subsection (1), commits an offence and is liable to a fine not exceeding P2 500 000 or to imprisonment for a term not exceeding ten years.”.

Substitution of section 5 of the Act

5. The Act is amended by substituting for section 5, the following new section —

“Capital

5. (1) The authorised capital of the Bank, fully subscribed and paid-up, shall be P150 000 000.
 (2) The authorised capital stock of the Bank shall be held solely by the Government and shall not be transferrable in whole or in part or be subject to any encumbrance whatsoever.
 (3) The authorised capital of the Bank may be increased by such an amount as may be proposed by the Bank and approved by the Government and no reduction of the authorised capital shall be permitted at any time.”.

Insertion of section 5A in the Act

6. The Act is amended by inserting immediately after section 5, the following new section —

“Coverage of shortfall in capital

5A. (1) In the event the audited annual financial statements of the Bank show that the value of the Bank’s assets has fallen or is below the sum total of its liabilities and its unimpaired authorised capital and the general reserve, the Board, with advice of the external auditor of the Bank, shall assess the situation and examine the report on the causes and extent of the shortfall, within a period of not more than 30 days.
 (2) In the event the Board approves the report under subsection (1), the Bank shall request the Minister for a capital contribution by the Government to remedy the deficit.
 (3) Notwithstanding any other provision of this Act, the Minister shall cause to be transferred to the ownership of the Bank, non-negotiable, non-interest bearing securities at market rate, issued by the Government from time to time, for such an amount which in the opinion of the Board may be necessary for the purpose of preserving the Bank’s capital from any impairment.”.

Substitution of section 6 of the Act

7. The Act is amended by substituting for section 6, the following new section —

“Profits,
losses and
distributable
earnings

6. (1) The net profits or losses of the Bank shall be determined in accordance with the International Financial Reporting Standards and such other relevant international accounting standards applicable to central banks.
- (2) The Bank shall at the end of each financial year, transfer any net profits from its operations to the Government in accordance with a schedule to be agreed between the Bank and the Minister after —
- (a) meeting all expenses for such year;
 - (b) making provision for bad and doubtful debts;
 - (c) making provision for depreciation of physical assets;
 - (d) making provision for pensions, gratuities and other benefits for its officers and employees;
 - (e) making provision for such other items as the Board may deem necessary;
 - (f) making good the issued capital and General Reserve balances; and
 - (g) deducting any amounts due and payable to the Bank by the Government.
- (3) Any net losses incurred by the Bank in any financial year shall, after the Bank has advised Government thereof, be charged first to the General Reserve and then to the Capital.
- (4) In determining profits and losses at the end of the financial year, the Bank shall clearly distinguish profits and losses arising from normal operations and profits and losses arising from exchange fluctuations.
- (5) The distributable earnings for allocation under subsection (2) shall be determined as follows —
- (a) by deducting from net profits the total amount of unrealised revaluation gains and by allocating an equivalent amount to the respective unrealised revaluation reserve accounts; and
 - (b) by deducting from the unrealised revaluation reserve accounts and adding to the distributable earnings as determined under paragraph (a) the amount of any unrealised profit that was deducted from the net profits for one or more previous years and was realized during the current financial year.
- (6) Unrealised revaluation losses shall be transferred by the Bank to the respective unrealised revaluation reserve accounts until such time as the revaluation reserve accounts have zero balance, then be charged against the current year's realised income until such time the income is zero, after which the losses shall be covered by the current year's profit, then by the general reserve.”.

Substitution
of section 8
of the Act

8. The Act is amended by substituting for section 8, the following new section —

“Establishment
and powers of
Board

8. (1) There shall be a Board of the Bank, constituted in accordance with section 9, in which, subject to the provisions of this Act, shall be responsible for the policy and general administration of the Bank.

(2) The Board shall —

- (a) formulate and adopt policies of the Bank, other than monetary policy;
- (b) supervise implementation of policies and execution of functions of the Bank;
- (c) appoint external auditors;
- (d) appoint the executive management of the Bank;
- (e) on the recommendation of the Monetary Policy Committee, approve the issuance of debt certificates by the Bank;
- (f) appoint such committees, as the Board may consider necessary for the discharge of the functions of the Bank;
- (g) determine general policies and adopt Bye-Laws and internal rules applicable to the administration and operations of the Bank;
- (h) determine the organisation of the Bank, including the establishment and location of branches, representative offices, and operations facilities;
- (i) approve the appointment of officers to the post of Deputy Head of Department, including that of the head of the internal audit function in the Bank;
- (j) determine and approve the Staff Establishment necessary to fulfil the functions of the Bank and the general terms and conditions of service for staff, including allowances and other benefits;
- (k) approve the budget of the Bank;
- (l) determine the accounting policies of the Bank and approve the annual report, other formal reports and financial statements of the Bank;
- (m) determine the categories of assets that shall be suitable for investment of the Bank’s financial resources, as well as those assets in which to invest the official foreign reserves;
- (n) approve or deny the issuance of licences for clearing, payment and securities settlement systems operators and providers subject to this Act or any other Act;
- (o) approve or deny the issuance by the Bank of licences for banks and other financial institutions, subject to this Act or any other Act;
- (p) propose, for the approval by the Minister, the form, design, composition and denomination of banknotes and coin;

- (q) assess risks and formulate contingency plans for the ongoing operations and security of the Bank;
- (r) adopt the rules of procedure of the Board; and
- (s) exercise such other powers and functions as explicitly granted by this Act.”.

9. The Act is amended by substituting for section 9, the following new section —

“Membership of Board

9. (1) The Board shall consist of —

- (a) seven members appointed by the Minister from among persons of good standing and experience in business, professional or academic matter, with not more than two members being public officers;
- (b) the Governor; and
- (c) the Permanent Secretary of the Ministry responsible for finance.

(2) The Minister shall appoint the chairman of the Board from amongst persons appointed under subsection (1) (a).

(3) The Deputy Governors shall be entitled to attend all meetings of the Board but shall have no vote unless they have been appointed members under this section.

(4) The members appointed under subsection (1) (a), other than Deputy Governors, shall be appointed for a term not exceeding four years and shall be eligible for re-appointment.

(5) The members appointed under this section shall be entitled to such fees and allowances as may be determined by the Board with the approval of the Minister.

(6) The Minister shall, within three months after commencement of this Act appoint a Chairman of the Board.”.

10. The Act is amended by deleting section 10.

11. The Act is amended in section 11 by deleting the words “or 10, as the case may be,” appearing therein.

12. The Act is amended by substituting for section 12, the following new section —

“Meeting and quorum of Board

12. (1) Subject to the provisions of this Act, the Board may regulate its own proceedings.

(2) The Board shall hold its first meeting on such date and at such place as the Minister may determine and thereafter the Board shall meet at least four times in a year.

(3) Upon giving notice, in writing, of not less than 14 days, a meeting of the Board may be called by the Chairperson, but if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon the giving of a shorter notice period.

(4) There shall preside at any meeting of the Board —

- (a) the chairman; or

Substitution of section 9 of the Act

Deletion of section 10 of the Act
Amendment of section 11 of the Act
Amendment of section 12 of the Act

(b) in the absence of the chairman, the person elected by members present from amongst persons appointed under section 9(1)(c) to act as chairman for purposes of that meeting.

(5) The quorum at any meeting of the Board shall be a simple majority of the members present and voting at the meeting.

(6) A decision of the Board on any question shall be taken on a consensus basis except that where a member requests a vote the matter shall be decided by a simple majority of the members present and voting at the meeting, and in the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberate vote.

(7) A decision of the Board shall not be rendered invalid by reason of a vacancy on the Board or the fact that a person who was not entitled to sit as a member did so sit.

(8) The Board may invite any person whose presence it deems necessary, to attend and participate in the deliberations of a meeting of the Board, but such person shall not participate in any decision making.”.

Amendment of section 13 of the Act

13. Section 13 of the Act is amended by substituting for —

(a) subsection (1), the following new subsection —

“(1) The President shall, in consultation with the Minister, appoint a Governor of the Bank and such number of Deputy Governors as he may consider necessary, who shall be persons of recognized experience in economics and financial matters.”;

(b) subsection (2), the following new subsection —

“(2) The Governor, who shall be a person of recognised experience in economics and financial matters, shall be appointed for a term not exceeding five years, and shall be eligible for re-appointment for a further term not exceeding five years.”; and

(c) subsection (3), the following new subsection —

“(3) Subject to the provisions of this Act, the Governor shall be appointed on such terms and conditions as may be set out in his letter of appointment, which terms and conditions shall not be altered to his disadvantage during his term of appointment.”.

Insertion of section 13A in the Act

14. The Act is amended by inserting immediately after section 13, the following new section —

“Powers and functions of Governor 13A. The Governor shall be responsible for —

(a) implementation of the policies of the Bank in accordance with the regulations, internal rules and decisions of the Board or the Monetary Policy Committee;

(b) the execution of the Board’s decisions and for the direction and control of the administration and operations of the Bank;

- (c) taking all actions required or deemed advisable for the administration or operations of the Bank, including without limitation to the procurement of goods and services, entering into contractual commitments on behalf of the Bank;
 - (d) appointing the staff, agents and correspondents of the Bank;
 - (e) generally representing the Bank;
 - (f) taking enforcement measures, including instructing any supervised bank and financial institution or any clearing, payment and security settlement system that it oversees;
 - (g) imposing remedial measures;
 - (h) appointing a receiver or temporary management for such entities; and
 - (i) imposing administrative sanctions provided under this Act.
- (2) The Governor may within the rules adopted by the Board, delegate any of his powers or functions to senior officers of the Bank.
- (3) The Governor shall report, not less than four times each year, to the Board on the conduct of the Bank's operations."

15. The Act is amended by inserting immediately after section 16, the following new section —

16A. (1) The Governor and Deputy Governor shall not engage in any occupational activity, with a financial, payment or credit services provider, whether gainful or not, for a period of 12 months from the date of cessation of their service to the Bank.

(2) The Governor or Deputy Governor who is affected by subsection (1), shall receive remuneration equal to 75 percent of the incumbent basic salary for the duration of the cooling-off period."

16. The Act is amended by substituting for section 18 the following new section —

18. (1) A member, staff or agent of the Bank shall avoid any situation liable to give rise to a conflict of interest and a conflict of interest shall arise where the member, staff or agent has a private or personal interest which may influence or appear to influence the impartial and objective performance of his duties.

(2) A member, staff or agent of the Bank shall not receive or accept from any source, any benefits, rewards, remuneration or gifts whether financial or non-financial which are connected in any way whatsoever with his activities within the Bank, in excess of a customary or negligible amount as specified under this Act.

Insertion of section 16A in the Act

Amendment of section 18 of the Act

(3) A member, staff or agent of the Bank shall not use confidential information to which he has access for the purpose of carrying out private financial transactions whether directly or indirectly through a third party or whether conducted at his own risk and for his own account or at the risk and for the account of a third party.

(4) A member, staff or agent of the Bank shall before the last day of January each year, disclose to the Board in full significant financial interests which he or any person with whom he has family business or financial connections may directly or indirectly possess and such disclosures shall also be made on a continuous basis in case of any material change in status and the Board may also require financial disclosure obligations for the staff or agents involved in financial operations or having access to such confidential information.

(5) A member, staff or agent of the Bank shall whenever any matter related to conflict of interest is before the Board, such person shall fully and promptly disclose his interest at the beginning of the discussion and shall not participate in the discussion and decision of the matter, but his presence shall be counted for the purpose of constituting a quorum.

(6) A member, staff or agent of the Bank shall have a fiduciary duty to the Bank and to place the Bank's interests and the customer's interests before his own pecuniary interest.

(7) Any person who contravenes any provision of this section commits an offence and shall be liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding five years or both."

Amendment
of section 19
of the Act

17. Section 19 of the Act is amended by —

- (a) substituting for subsection (1), the following new subsection —
“(1) A member, employee or agent of the Bank shall not disclose to any person information relating to the affairs of the Bank or any financial institution, business or other person, which information he has acquired in the performance of his duties or functions, except when he is lawfully required to do so by a court or under any law or when the interest of the Bank requires disclosure in legal proceedings or when the Bank provides information to an agency in Botswana.”;
- (b) inserting immediately after subsection (4), the following new subsections —
“(5) The Bank may, at its initiative or upon request made to it by any central bank, supervisory authority or any regulatory authority in the ordinary course of business, disclose any of the information to such institution within or outside Botswana, except that the Bank shall satisfy itself that the information is required for the proper discharge of the duties of the requesting authority and such authority shall be bound by professional secrecy or confidential duty.

- (6) In the case the information originates from a foreign authority, the exchange of information with such authorities shall be allowed when such foreign authority has agreed to the further transmission of its information.”; and
- (c) substituting for the figures “P25 000” and “P20 000” appearing therein, the figure “P200 000”, respectively.

18. The Act is amended by inserting immediately after section 19, the following new sections —

“Establishment, powers and functions of Monetary Policy Committee, 19A. (1) There shall be a Monetary Policy Committee which shall be responsible for the formulation of the monetary policy within the Bank.

(2) The Monetary Policy Committee shall within the context of the monetary policy framework approved by the Minister and the general procedures and guidelines determined by the Board, formulate the Bank’s monetary policy.

(3) The Monetary Policy Committee shall, within the context of the exchange rate regime, established by the President in consultation with the Minister and the Governor, implement the exchange rate policy.

(4) The Monetary Policy Committee shall issue debt certificates and such instruments as may be necessary for monetary policy operations.

Membership of Monetary Policy Committee, 19B. (1) The Monetary Policy Committee shall comprise of —

- (a) the Governor who shall be chairman;
 - (b) the Deputy Governors;
 - (c) the head of the department responsible for economic research of the Bank;
 - (d) the head of the department responsible for treasury operations of the Bank; and
 - (e) four persons appointed by the Minister, who are not employees of the Bank, with knowledge and experience relevant to the functions of the Monetary Policy Committee.
- (2) The Monetary Policy Committee shall adopt decisions by a simple majority of the membership present and voting at the meeting and, in the event of an equality of votes, the Governor shall have a casting vote in addition to his deliberate vote.”.

19. Section 21 of the Act is amended by substituting for the word “Bank” appearing therein, the word “Governor”.

20. Section 22 of the Act is amended by substituting for subsection (3), the following new subsection —

“(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable to a fine not exceeding P10 000 000 or to imprisonment for a term not exceeding 20 years, or to both.”.

Insertion of sections 19A and 19B in the Act

Amendment of section 21 of the Act

Amendment of section 22 of the Act

A.220

Amendment
of section 23
of the Act

21. Section 23 of the Act is amended in paragraph (b) by substituting for the word “P100” appearing therein, the word “P1 000”.

Amendment
of section 29
of the Act

22. Section 29 of the Act is amended by substituting for subsection (1), the following new subsection —

“(1) Any person who counterfeits, forges or, without the permission of the Bank, photocopies or otherwise reproduces any note issued by the Bank shall be guilty of an offence and shall be liable to a fine not exceeding P10 000 000 or to imprisonment for a term not exceeding 20 years, or to both.”.

Amendment
of section 31
of the Act

23. Section 31 of the Act is amended in subsection (1) by substituting for —

(a) paragraph (a) appearing therein, the following new paragraph —

“(a) demand or time deposits, money at call, banknotes and coins, bills of exchange and repurchase agreements or reverse repurchase agreements denominated in such foreign currencies as the Board may, for purposes of this section, approve;” and

(b) paragraph (f), appearing therein, the following new paragraph —

“(f) such other assets as the Board may, for the purposes of this section, approve.”.

Substitution
of section 36
of the Act

24. The Act is amended by substituting for section 36, the following new section —

“Opening accounts for domestic financial institutions, etc. **36.** The Bank may open accounts for, and accept deposits from domestic financial institutions, deposit insurance agencies and other entities, including central securities depository institutions, under such terms and conditions as the Board may from time to time determine.”.

Amendment of
section 38 of
the Act

25. Section 38(2) of the Act is amended by substituting for paragraph (b), the following new paragraph —

“(b) purchase from, sell to discount and rediscount for account holders any treasury bills or other securities issued or guaranteed by Government, forming part of a public issue;”.

Insertion of
section 38A
in the Act

26. The Act is amended by inserting immediately after section 38, the following new section —

“Lender of last resort **38A.** (1) The Bank may, in exceptional circumstances and on such terms and conditions as it may determine, act as a lender of last resort for a bank by providing emergency liquidity assistance to the bank or for the bank’s benefit, for a period not exceeding 92 calendar days, that may be renewed by the Bank on the basis of a programme specifying the measures that the bank concerned will be taking:

Provided that no such commitment shall be made by the Bank, unless —

- (i) in the opinion of the Bank, the bank is solvent and provides adequate collateral and the request for financial assistance is based on the need to improve liquidity, or
 - (ii) the assistance is necessary to preserve the stability of the financial system and the Minister has issued to the Bank a guarantee in writing on behalf of the Government securing the repayment of the loan.
- (2) The Bank shall determine the maximum percentage of the value of the surety deposited to guarantee the credit operations provided under subsection (1).
- (3) The Bank shall take appropriate measures required under the Act, where it discovers that a bank is unable to carry out the approved programme provided under subsection (1).
- (4) The total period of the loans and facilities granted under this section shall not exceed 184 calendar days.”.

27. Section 40 of the Act is amended by deleting subsection (3) appearing therein.

28. Section 41(6)(c) of the Act is amended in —

- (a) subparagraph (i), by substituting for the figure “P50 000” appearing therein, the figure “P100 000”; and
- (b) subparagraph (ii), by substituting for the figure “P5 000” appearing therein, the figure “P10 000”.

29. The Act is amended by inserting immediately after section 43, the following new sections —

“Deposit
Insurance
Scheme

43A. (1) There shall be established and maintained in such manner as may be prescribed a deposit insurance scheme to provide insurance against the loss of part or all deposits in a bank in a manner that will contribute to the stability of the financial system in Botswana and minimise the exposure of loss.

(2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) shall set out the terms and conditions of the scheme which shall include —

- (a) financing of the deposit insurance scheme through a deposit insurance fund to which shall be credited premiums levied on banks and shall be charged all costs associated with the payment of deposits any restructuring of banks to reduce or avert a threatened loss to the scheme or to pay costs of their liquidations;
- (b) types of deposits covered and the ceiling of coverage;
- (c) powers of the body administering the scheme; and
- (d) administration of the scheme.

(3) The Bank may advance funds to the deposit insurance fund on such repayment terms and conditions as it deems fit for the administration of the deposit insurance scheme.

Amendment
of section 40
of the Act
Amendment
of section 41
of the Act

Insertion of
sections 43A
and 43B in
the Act

Licensing and oversight of clearing, payment and securities settlement systems, money or value transfer services

43B. (1) The Bank shall be responsible for the licensing, registration and oversight, including the imposition of remedial measures and administrative sanctions, of clearing, payment, money or value transfer services and securities settlement systems, as well as any operator or provider directly or indirectly involved in such systems, in order to ensure the integrity, efficiency and safety of the payment system.

(2) The Minister may, by Regulations —

- (a) require the registration or licensing of any clearing, payment, money or value transfer services and securities settlement systems or clearing, payment, money or value transfer services and securities settlement system operator or provider;
- (b) require any clearing, payment, money or value transfer services and securities settlement systems as well as operators or providers directly or indirectly involved in such systems to observe safe and sound conditions and requirements as may be established by the Bank;
- (c) regulate and supervise the issuance and quality of payment instruments; and
- (d) regulate and supervise electronic payments services providers and money or value transfer service providers.

(3) Any person who contravenes regulations made under this section shall be liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years.”.

Insertion of sections 54A and 54B in the Act

30. The Act is amended by inserting immediately after section 54, the following new sections —

“Cooperation with Government and other Authorities

54A. (1) The Bank shall cooperate with the Government and any other public agency in Botswana or abroad in pursuing its objectives and the Bank may conclude written agreements of cooperation and memoranda of understanding.

(2) The Governor shall hold regular meetings and at least on a biannual basis with the Minister to consider management of foreign exchange reserves, monetary and fiscal policies and other matters of common interest and the Governor and the Minister shall keep one another fully informed of all matters that affect the Bank and the ministry jointly.

(3) The Bank shall be consulted by the Government on any draft law concerning matters that relate to the objectives of the Bank or that otherwise are within the Bank’s field of competence, before being submitted to the National Assembly.

Establishment
of Financial
Stability
Council

54B. (1) There is hereby established a Financial Stability Council (hereinafter referred to as the "Council" which shall be responsible for —

- (a) preserving the stability of the financial system;
- (b) ensuring cooperation between its members with respect to the assessment of the build-up of economic and financial sector systemic risks in Botswana;
- (c) developing coordinated policy responses to risks including crisis management; and
- (d) making recommendations, issuing warnings or opinions addressed to regulatory bodies regarding financial institutions.

(2) The Council shall comprise of the —

- (a) Governor;
- (b) Permanent Secretary in the ministry responsible for finance;
- (c) Chief Executive Officer of the Non-Bank Financial Institutions Regulatory Authority;
- (d) Director of the Deposit Insurance Scheme; and
- (e) Director General of the Financial Intelligence Agency.

(3) The meetings of the Council shall be chaired by the Governor and the Bank shall act as the Secretariat of the Council.

(4) The Council shall adopt decisions by a simple majority of the members present and voting at the meeting and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his deliberate vote.

(5) The Council shall regulate its own proceedings.”.

31. The Act is amended by substituting for section 62, the following new section —

“Prohibition
on lending to
Government

62. (1) Subject to section 68(2), the Bank shall not grant any direct or indirect credit to the Government or any other public agency or Government owned entity, with the exception of an intra-day credits, to secure the smooth functioning of the payment system and such intra-day credit shall be fully repaid before the end of the same day.

(2) Subsection (1) shall not apply to publicly owned banks and other publicly owned entities, which shall be given the same treatment as privately owned banks and other privately owned entities.

(3) Notwithstanding subsection (1), the Bank may purchase Government securities provided that such purchases are only made in the secondary market, as provided for under subsection (5).

(4) Notwithstanding the above subsections, the Bank may grant temporary advances to the Government for a period not exceeding 92 calendar days:

Amendment
of section 62
of the Act

Provided that such advances are provided on terms with market-related interest rates prevailing in Botswana.

(5) The total outstanding advances, credit facilities or guarantees of the Bank to the Government shall not exceed five percent of the annual average of the Government ordinary revenue for the three financial years immediately preceding for which audited accounts are available.

(6) The Bank shall be prohibited from granting any advances beyond the conditions as provided in subsections (4) and (5).”

Substitution
of section 65
of the Act

32. The Act is amended by substituting for section 65, the following new section —

“Policy
directives by
the President

65. (1) If the Minister is of the opinion that the policies being pursued by the Bank are not conducive to the achievement of the objectives of the Bank, the Minister and the Governor shall make an attempt to reach a written agreement on the Bank’s policies.

(2) If the Minister and the Governor are unable to reach a written agreement, the Minister may, in case he is of the opinion that it is necessary for the coordination of monetary, fiscal and economic policies and after consultation with the Governor, submit to the President and to the Bank a copy of the recommendations.

(3) The Bank shall if it has any objection to the recommendations under subsection (2), submit in writing, the objections to the President within three days of receiving the recommendations, until the dispute is resolved and the policy as determined by the Bank shall subsist.

(4) The President shall —

(a) by directive, determine the policy to be adopted by the Bank within a period of three months from the date of receipt of the Bank’s submission; and

(b) inform the Bank through the Governor in writing, of the policy so determined.

(5) The Bank shall thereupon give effect to the policy as determined while the directive shall remain in operation.

(6) The Minister shall publish in the *Gazette* and the media and cause to be laid before the National Assembly, within 15 days after the President has informed the Bank through the Governor of the policy so determined of —

(a) the directive referred to under subsection (4);

(b) the recommendation submitted to the President under subsection (2); and

(c) the written objection of the Bank submitted to the President under subsection (3).

(7) If the President does not issue a directive to determine the policy to be adopted by the Bank within a period of three months, the recommendation of the Minister shall be considered to have lapsed.”

33. The Act is amended by substituting for section 66, the following new section —

“Accounts,
records and
financial year

66. (1) Without prejudice to section 5A and to the extent possible to achieve its objectives, the Bank shall maintain accounts and records in accordance with the national and International Financial Reporting Standards to reflect its operations and financial condition.

(2) The financial year of the Bank shall begin on 1st January and end on 31st December.”

Substitution
of section 66
of the Act

34. The Act is amended by substituting for section 67, the following new section —

“External
audit

67. (1) The accounts, records and financial statements of the Bank shall at least once a year be audited in accordance with the International Standards on Auditing by independent external auditors which shall be of good repute and with recognized experience in the auditing of major international financial institutions.

(2) On the recommendation by the Board, the external auditors shall be approved by the Minister and subsequently appointed by the Board and no external auditors shall be appointed for more than two consecutive terms of five years.

(3) The Board may dismiss the Bank’s external auditors for good cause, subject to the approval of the Minister.

(4) The external auditor shall report to the Audit Committee of the Board and ultimately to the Board on key matters arising from the audit and in particular on material weaknesses in internal control in relation to the financial reporting process as laid down in the Audit Committee Charter.

(5) Without prejudice to subsection (2), the Auditor General shall, if so requested by the Minister, examine and report on the operational efficiency of the management of the Bank and the Bank shall provide the Auditor General with all necessary and proper facilities thereof.”

Substitution
of section 67
of the Act

35. The Act is amended by inserting immediately after section 67, the following new section —

“Audit
Committee

67A. (1) There shall be an Audit Committee of the Board which shall be chaired by a non-executive member of the Board and may include non-Board members and shall be responsible for —

(a) the review, management and audit of the financial statements of the Bank;

(b) making recommendations to the Board concerning accounting and auditing policies, financial controls; and

Insertion of
section 67A
in the Act

Substitution
of section 68
of the Act

(c) the appointment of auditors.

(2) The Audit Committee shall consist of three non-executive members who shall have competence in accounting or auditing.”.

36. The Act is amended by substituting for section 68, the following new section —

“Annual
financial
statements
and Reports

68. (1) The Bank shall prepare financial statements for its financial year.

(2) The Bank shall, within three months after the close of its financial year, submit to the Minister —

(a) financial statements approved by the Board, signed by the Governor and certified by an external auditor; and

(b) a report approved by the Board, of its operations and affairs during the financial year that just ended in particular in relation to its policy objectives and the events that affected the economy of the country.

(3) The Minister shall, within 30 days after receipt of the annual financial statements, cause a copy of such annual financial statements and the report of operations to be laid before the National Assembly.

(4) The Bank shall publish the financial statements referred to under subsection (2) and the audited financial statements on its website.

(5) The Bank shall as soon as possible, after the last working day of each month, prepare and publish a balance sheet as of the end of that month and copies of such balance sheet shall be transmitted to the Minister and be published in the *Gazette* and the Banks website.”.

Amendment
of section 69
of the Act

37. Section 69 of the Act is amended by substituting for subsection (4), the following new subsection —

“(4) Notwithstanding the provisions of subsection (1) and subject to such terms and conditions as shall be determined by the Board, the Bank may —

(a) grant advances to any of its officers or employees for such purposes and in such amounts as the Board may approve; and

(b) with the approval of the Minister, acquire shareholding in any company or establish such subsidiaries as may be necessary for the purpose of insuring deposits, including prescribing the establishment of any deposit insurance scheme, to promote the development of money or securities market in Botswana or to generally ensure financial stability in Botswana.”.

Amendment
of section 70
of the Act

38. Section 70 of the Act is amended in subsection (2) by substituting for —

(a) the word “P50 000” appearing therein, the word “P500 000”; and

(b) the words “two years” appearing therein, the words “five years”.

39. The Act is amended by inserting immediately after section 72, the following new sections —

Insertion of sections 72A, 72B and 72C in the Act

“Indemnity 72A. No matter or thing done or omitted to be done by a member or staff of the Bank shall, if the matter or thing is done or omitted to be done in good faith in the course of the performance of the functions of the Bank, render that member or staff liable to an action, claim or demand.

Restriction on execution against property of Bank 72B. Notwithstanding anything to the contrary contained in any law, where a judgment or court order is obtained against the Bank, no execution, attachment or process of any nature shall be issued against the Bank or against property of the Bank and the Governor shall cause to be paid out of the funds of the Bank, such amounts of money as may, by judgment or court order, be awarded against the Bank to the person entitled to the money.

Preferential right 72C. (1) The Bank shall have a first ranking unconditional preferential right to satisfy each of its claim arising from the execution of its function from any cash balances, securities and other assets that it hold for the account of the debtor concerned, whether as collateral to secure its claims or otherwise, at the time that such claim becomes due and payable.

(2) The Bank may exercise its preferential right only by appropriating the cash balances by way of compensation and by selling securities and other assets without undue delay and against a reasonable price and paying itself from the proceeds of the sale after deducting there from the costs associated with the sale.

(3) No court action shall be required and no competing claim shall be permitted to delay the exercise by the Bank of its preferential right in terms of this section.”.

PASSED by the National Assembly this 25th day of July, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.