FINANCIAL INTELLIGENCE ACT, 2019

No. 11 **of 2019**

ARRANGEMENT OF SECTIONS

PART I — *Preliminary*

SECTION
1. Short title and commencement
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 of Committee
10. Meetings of Committee

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

11. Obligation to conduct risk assessment
12. Obligation to implement programmes to combat commission of financial offences
13. Obligation to implement group-wide programmes
14. Duty to conduct customer due diligence
15. Conduct ongoing customer due diligence
16. Identification of customer
17. Enhanced due diligence
18. Enhanced due diligence measures relating to prominent influential persons
19. Enhanced due diligence measures relating to beneficiaries of life insurance services
20. Enhanced due diligence measures relating to cross border correspondent banking
21. Prohibition of anonymous accounts
22. Prohibition of shell banks

23. Prohibition of establishing or maintaining business relationship with terrorist or member of terrorist group
24. Simplified customer due diligence measures
25. Monitoring complex, unusual and high risk transactions
26. Failure to complete customer due diligence

PART V — *Keeping of Records*

27. Keeping of records
28. Period records to be kept
29. Records kept by third party
30. Admissibility of electronic records
31. Offences related to records
32. Access to records of specified party

PART VI — *Reporting Obligation and Cash Transactions*

33. Reporting of suspicious transactions
34. Cash transactions above prescribed limit
35. General reporting
36. Conveyance of cash
37. Wire transfer
38. Content of report
39. Continuation of transaction
40. Interruption of transaction by Agency
41. Offences relating to reporting
42. Indemnity of person making report
43. Offences for non-compliance

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

44. Obligations of supervisory authorities
45. Obligations of accountable institutions
46. Receipt of information by Agency
47. Referral of information by Agency
48. Referral of information by supervisory authority
49. Membership of international financial organisation
50. Certificate issued by Agency
51. Information held by Agency

PART VIII — *General Provisions*

52. Confidentiality by Director General, etc.
53. Confidentiality by third parties
54. Declaration of assets by Director General, etc.
55. Indemnity of Director General, etc.
56. Power to amend Schedules
57. Regulations
58. Repeal of Cap. 08:07
59. 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 the National Financial Intelligence Coordinating Committee; to provide for the reporting of suspicious transactions and other cash transactions; to provide for mutual assistance with comparable bodies outside Botswana in relation to financial information and for matters connected therewith and incidental thereto.

Date of Assent: 28.08.2019
Date of Commencement: ON NOTICE
ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

Short title and commencement

1. This Act may be cited as the Financial Intelligence Act, 2019, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

"accountable institution" means a person referred to in Schedule III, and includes an associate or subsidiary outside of the person or employee of such person;

"act of terrorism" has the same meaning assigned to it under the Counter-Terrorism Act; Cap. 08:08

"Agency" means the Financial Intelligence Agency established under section 4;

"anonymous account" means an account which cannot be linked to any person or be traced to any customer;

"arms of war" has the same meaning assigned to it under the Arms and Ammunition Act; Cap. 24:01

"beneficial owner" means a natural person, who directly or indirectly through any contract, arrangement, understanding, relationship or otherwise —

(*a*) in relation to an incorporated body, ultimately owns or has a controlling ownership or exercises ultimate effective control through positions held in the incorporated body or is the ultimate beneficiary of a share or other securities in the body corporate;

(*b*) in relation to a trust or other legal arrangement, is the settlor, trustee or ultimate beneficiary of the trust or legal arrangement or has the power, alone or jointly with another person or with the consent of another person, to —

(i) dispose of, advance, lend, invest, pay or apply trust property or property of the legal arrangement,

(ii) vary or terminate the trust or legal arrangement,
(iii) add or remove a person as a beneficiary or to or from a class of beneficiaries,
(iv) appoint or remove a trustee or give another person control over the trust or legal arrangement, or
(v) direct, withhold consent or to overrule the exercise of a power referred to in subparagraphs (i) – (iv);

(*c*) 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; or

(*d*) a transaction is conducted on his or her behalf.

"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 or legal arrangement and the specified party or accountable institution where payment to be made is not known or capable of being ascertained at the time of the conclusion of the arrangement;

"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 established 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;

"correspondent banking" means the provision of banking services by one bank to another;

Cap. 41:01 "councillor" has the same meaning assigned to it under the Local Government Act;

"credible sources" means any 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 financial offence;

"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; Cap. 23:02

"Egmont Group" means an informal body of governments that share the common goal of providing a forum to enhance mutual cooperation and share financial information in order to detect financial offences;

"enhanced due diligence" means higher level of due diligence required to mitigate the increased risk of commission of financial offence;

"financial offence" means money laundering, financing of an act of terrorism, financing of proliferation of arms of war or NBC weapons or the acquisition of property from the proceeds of any other offence;

"funds" means assets of any kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets;

"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 strong ties 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 appears on the sanction list;

(*e*) that has a business relationship with other businesses that appear on the sanction list;

(*f*) that is subject to or has been a subject of an investigation by an investigatory or supervisory authority;

(*g*) that is managed by a person who is the subject of an investigation by an investigatory or supervisory authority; or

(*h*) is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;

"high risk jurisdiction" means a country that —

(*a*) is identified by a competent authority as having no or weak regime on anti-money laundering, counter-financing of an act of terrorism or counter-financing of proliferation of arms of war or NBC weapons;

(*b*) is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;

(*c*) is identified by the Financial Action Task Force or any such similar body to be a high risk jurisdiction; or

(*d*) provides funding or support for terrorist activities or proliferation of arms of war or NBC weapons, or that has been designated as a country that supports terrorism or proliferation of arms of war or NBC weapons or a country that allows high risk business;

"immediate member of the family" means a spouse, son, daughter, sibling or parent;

Cap. 40:01 "*kgosi*" has the same meaning assigned to it under the *Bogosi* Act;

"investigatory authority" means an authority empowered by an Act of Parliament to investigate or prosecute unlawful activities;

Cap. 08:01 "judicial officer" has the same meaning assigned to it under the Penal Code;

"legal arrangement" means express trusts or other similar arrangement;

"money laundering" has the same meaning assigned to it under the Cap. 08:03 Proceeds and Instruments of Crime Act;

"National Counter-Terrorism Committee" means National Counter Terrorism Committee established under the Counter-Terrorism Act;

"NBC weapons" means —

(*a*) nuclear explosive device as defined in the Nuclear Weapons Act No. 17 of 2018 (Prohibition) Act;

(*b*) biological or toxin weapons as defined in the Biological and Act No. 27 of 2018 Toxin Weapons (Prohibition) Act; or

(*c*) chemical weapons as defined in the Chemical Weapons Cap. 24:04 (Prohibition) Act;

"proliferation" means the manufacture, acquisition, possession, development, export, transhipment, brokering, transport, transfer, stockpiling or use of any arms of war or NBC weapons in contravention of the Arms and Ammunition Act, Nuclear Weapons (Prohibition) Act, Biological and Toxin Weapons (Prohibition) Act or Chemical Weapons (Prohibition) Act;

"prominent influential person" means a person who is 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*) 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;
(*l*) a senior executive of a public body;
(*m*) a senior executive of a political party;
(*n*) religious leaders;
(*o*) senior executives of international organisations operating in Botswana;
(*p*) a person who has in the last five years held any of the positions referred to in paragraphs (*a*) to (*o*); or
(*q*) such person as may be prescribed;

"property" means money or any other movable, immovable, corporeal, or unincorporeal thing whether located in Botswana or elsewhere and includes any rights securities and any interest in privileges and claims over that thing as well as —

(*a*) any currency, whether or not the currency is legal tender in Botswana, and any bill, security, bond, negotiable instrument or any instrument capable of being negotiated which is payable to bearer or endorsed payable to bearer, whether expressed in Botswana currency or otherwise;
(*b*) any balance held in Botswana currency or in any other currency in accounts with any bank which carries on business in Botswana or elsewhere;
(*c*) any balance held in Botswana currency or in any other currency in accounts with a bank which carries on business in Botswana;
(*d*) any balance held in any currency with a bank outside Botswana;
(*e*) motor vehicles, ships, aircraft, boats, works of art, jewellery, precious metals or any other item of value;
(*f*) any right or interest in property; and
(*g*) funds or other assets including all property and any interest, dividends or income on or value accruing or generated by such funds or assets;

"religious leader" means a person who is a member of the governing body of any religious body registered with the Registrar of Societies or any member vested with decision making authority within the religious body;

"risk assessment" in relation to specified party or an accountable institution, means the undertaking of appropriate steps to identify and assess 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 or accountable institution 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, settlor, trustee or any person who is concerned with the management of its affairs;

Cap. 46:04

"shell bank" has the same meaning assigned to it under the Banking Act;

"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;

"supervisory authority" means a competent authority designated under Schedule II with responsibilities aimed at ensuring compliance with this Act 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 financing of an act of terrorism, or to be used to finance an act of terrorism or the financing of the proliferation of arms of war or NBC weapons, 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;

"transaction" means an arrangement between a customer and a specified party or accountable institution, and includes the following —

(*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; and — Act No. 11 of 2018

"ultimate effective control" means where ownership or control is exercised through a chain of ownership or by means of control other than direct control.

PART II — *Establishment of Financial Intelligence Agency*

Conflict with other laws

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.

Continuation of Agency

4. (1) The Financial Intelligence Agency established under section 3 of the repealed Act shall continue to exist as if established under this Act.

(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.

Appointment of Director General

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.

(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 as an examiner for the purposes of determining compliance with this Act.

Functions of Agency

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

(*a*) concerning suspicious transactions;

(*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 or the financing of the proliferation of arms of war or NBC weapons.

(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*) conduct examinations of a specified party to ensure compliance with this Act by the specified party;

(*e*) give guidance to a specified party regarding the performance by the specified party of duties under this Act;

(*f*) provide feedback to a specified party or accountable institution regarding a report made in accordance with this Act;

(*g*) exchange information with a comparable body;

(*h*) 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; and

(*i*) communicate the list of high risk countries to specified parties, accountable institutions and supervisory authorities.

(3) In furtherance of the functions of the Agency, the Director General may consult with and seek such guidance from law enforcement officers, government agencies and such other persons as the Agency considers desirable.

Security screening of Director General, etc.

7. (1) No person shall 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 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 not perform any functions of the Agency;

(*b*) the office of the Director General or of the officer shall become vacant; and

(*c*) a new Director General or officer shall be appointed.

PART III — *National Coordinating Committee on Financial Intelligence*

Continuation of National Coordinating Committee on Financial Intelligence

8. (1) The National Coordinating Committee on Financial Intelligence established under section 6 of the repealed Act shall continue to exist as if established under this Act.

(2) The Committee shall have members consisting of two representatives of —

(*a*) the Ministry responsible for finance who shall be chairperson;

(*b*) the Directorate on Corruption and Economic Crime;

(*c*) the Botswana Police Service;

(*d*) the Attorney General's Chambers;

(*e*) the Bank of Botswana;

(*f*) the Botswana Unified Revenue Service;

(*g*) the Ministry responsible for international cooperation;

(*h*) the Department of Immigration;

(*i*) the Non-Bank Financial Institution Regulatory Authority;

(*j*) Directorate of Public Prosecutions;

(*k*) Directorate of Intelligence and Security Service; and

(*l*) Ministry responsible for defence:

Provided that one member shall be a substantive member and the other one an alternate member.

(3) The Director General shall be secretary to the Committee.

(4) A member of the Committee shall hold office for a period of four years and shall at the end of that period be eligible for re-appointment for a further term of four years.

Functions of Committee

9. The Committee shall —

(*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; and

(*e*) generally advise the Minister in relation to such matters relating to financial offences, as the Minister may refer to the Committee.

Meetings of Committee

10. (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 Minister so directs.

(3) 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.

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

Obligation to conduct risk assessment

11. (1) A specified party or accountable institution 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, such risk assessments should be conducted prior to their launch or use; and

(*d*) life insurance services.

(2) A specified party or accountable institution 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 it 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 or accountable institution 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 (3), to its supervisory authority on request.

(5) A specified party or accountable institution 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.

(6) A specified party or accountable institution that fails to conduct a risk assessment and to take the appropriate measures to manage and mitigate the risk of a financial offence identified shall be liable to a fine not exceeding P1 000 000 as may be imposed by a supervisory authority.

(7) 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 shall be liable to a fine not exceeding P1 000 000 as may be imposed by a supervisory authority.

Obligation to implement programmes to combat commission of financial offences

12. (1) A specified party or accountable institution 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 compliance officers at the 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 of potential employees;

(*c*) maintain on-going employee training programme with regard to the specified party's obligations under this Act;

(*d*) develop and maintain independent audit function to examine and evaluate any policies, 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; and

(*e*) implement and maintain a customer acceptance policy, internal rules, programmes, policies, 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 criminal offence in Botswana;

(*c*) not have been convicted outside Botswana of a criminal offence, which, if committed in Botswana would have been a criminal offence;

(*d*) not be an unrehabilitated insolvent;

(*e*) not be a 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 instructions, guidelines or recommendations issued under section 44 (1) (*b*).

(4) A specified party or accountable institution that fails to implement programmes to counter the commission of a financial offence shall be liable to a fine of P1 000 000 as may be imposed by a supervisory authority.

Obligation to implement group-wide programmes

13. (1) A specified party shall implement group-wide programmes to counter the commission of a financial offence consistent with instructions, guidelines or recommendations issued under section 44 (1), 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 —

Act No. 32 of 2018

(*a*) protection of personal data in accordance with the Data Protection Act; and

(*b*) sharing of information required for —

(i) customer due diligence, and

(ii) preventing or managing risk associated with a financial offence with other members of the group; and

(*c*) safeguarding the confidentiality and use of information exchanged.

(3) A specified party shall apply measures referred to in section 12 (1) (*a*) – (*e*) to a group-wide programme.

(4) The internal controls and procedures referred to in subsection (2) shall be consistent with prescribed requirements and be made available to all employees of the specified party and shall include —

(*a*) the information the record of which is required to be kept under this Part;

(*b*) identification of reportable transactions; and

(*c*) training of employees of the specified party to recognise financial offences.

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

(6) 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 anti-money laundering, counter-financing of terrorism and counter-financing of proliferation measures are more strict than the measures of the foreign country.

(7) Where the laws of the foreign country referred to above does 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, the specified party shall —

(*a*) inform its supervisory authority accordingly; and

(*b*) take additional measures to handle the risk of commission of financial offences effectively.

(8) 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.

Duty to conduct customer due diligence

14. (1) A specified party or accountable institution shall conduct customer due diligence measures —

(*a*) when establishing a business relationship or concluding a transaction with a customer;

(*b*) when carrying out a transaction 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;

(*c*) when carrying out a domestic or international wire transfer;

(*d*) when there is doubt about the veracity or adequacy of previously obtained customer identification data; and

(*e*) where there is suspicion of a financial offence.

(2) A specified party or accountable institution 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 11; and

(*b*) its assessment of risk arising in any particular case.

(3) In assessing the level of risk in a particular case, the specified party or accountable institution 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; and

(*c*) the regularity and duration of the business relationship.

(4) A specified party or accountable institution that fails to conduct customer due diligence shall be liable to a fine of P1 000 000 as may be imposed by a supervisory authority.

Conduct on-going customer diligence

15. (1) A specified party or accountable institution shall, on an on-going 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.

(2) Where a specified party or accountable institution engages with a prospective customer to establish a business relationship, the specified party or accountable institution shall obtain information to reasonably enable the specified party or accountable institution to determine whether future transactions to be performed in the course of the business relationship concerned are consistent with the specified party's or accountable institution's knowledge of that prospective 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.

(2) A specified party or accountable institution that contravenes this section commits an offence and is liable to a fine not exceeding P1 500 000.

Identification of customer

16. (1) A specified party or accountable institution shall where required to conduct due diligence in terms of section 14 and before establishing a business relationship or carrying out a transaction —

(*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 or accountable institution shall establish —

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

(*b*) and 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 or accountable institution 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) verify the other person's identity on the basis of documents or information obtained from a credible 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 or accountable institution shall taking 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 depending on 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*) 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;

(*d*) a deed of trust; or

(*e*) 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 or accountable institution that contravenes a provision of this section shall be liable to such 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 or accountable institution —

(*a*) has not reported a suspicious transaction under section 33; and

(*b*) forms a reasonable suspicion that continuing the customer due diligence process will tip off the customer,

the specified party or accountable institution shall discontinue the customer due diligence process and instead report a suspicious transaction to the Agency.

Enhanced due diligence

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

(*a*) in any case identified by the specified party or accountable institution as one where there is a high risk of commission of a financial offence or from information provided to the specified party or accountable institution by 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 or accountable institution has established that the customer or prospective customer is a prominent influential person in accordance with section 18;

(*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 19;

(*g*) in relation to a specified party that is a financial institution, when providing correspondent banking services in accordance with section 20;

(*h*) in cases where the Financial Action Task Force has advised that measures should be taken in relation to a country because of the risk of terrorist financing or money laundering activities being carried on in the country; and

(*i*) in case where the Agency has reasonable believe that there is a risk that financial offences are being carried on in the country, and that this poses a significant risk to the national interests of Botswana.

(2) A specified party or accountable institution that contravenes this section commits an offence and is liable to a fine not exceeding P1 500 000 as may be imposed by the supervisory authority.

Enhanced due diligence measures relating to prominent influential persons

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

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

(*c*) conduct enhanced ongoing monitoring of the business relationship.

Enhanced due diligence measures relating to beneficiaries of life insurance services

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

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

Enhanced due diligence measures relating to cross-border correspondent banking

20. A financial institution that provides cross-border correspondent banking services shall in addition to measures required under section 16 —

(*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,

(ii) whether the respondent bank has been subject to investigation or regulatory action with respect to the commission of a financial offence;

(*c*) assess the controls implemented by the respondent's institution to counter the commission of financial offences;

(*d*) be satisfied that the respondent bank has conducted customer due diligence on the customers having direct access to accounts of the correspondent bank;

(*e*) be satisfied that a respondent bank does not permit its accounts to be used by a shell bank;

(*f*) be satisfied that the respondent bank has provided relevant customer due diligence information upon request to a correspondent bank;
(*g*) obtain approval from senior management before establishing a new correspondent relationship; and
(*h*) understand the responsibilities of each bank with respect to "payable through" accounts and ensure that the respondent bank —
(i) has verified its customer's identity,
(ii) has implemented mechanisms for ongoing monitoring with respect to its customers, and
(iii) is capable of providing relevant identifying information on request.

Prohibition of anonymous accounts

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

(2) A specified party that contravenes this section commits an offence and is liable —
(*a*) to a fine not exceeding P10 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 a supervisory authority.

Prohibition of shell banks

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

(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 contravenes this section commits an offence and is liable —
(*a*) to a 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 a supervisory authority.

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

23. (1) A specified party or accountable institution shall not establish or maintain a business relationship with a terrorist or member of a terrorist group declared under section 12 of the Counter-Terrorism Act, unless, the specified party or accountable institution has been authorised by the National Counter-Terrorism Committee.

(2) A specified party shall not establish, maintain, administer, or manage a correspondent account in Botswana for, or on behalf of, a person who is a terrorist or member of a terrorist group declared under section 12 of the Counter-Terrorism Act, unless, the specified party or accountable institution has been authorised by the National Counter-Terrorism Committee.

(3) A specified party or accountable institution that contravenes this section commits an offence and is liable —
(*a*) to a 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 a supervisory authority.

Simplified customer due diligence measures

24. (1) A specified party or accountable institution 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 11;

(*b*) any instruction, guidelines or recommendations issued by a supervisory authority under section 44; and

(*c*) a National Risk Assessment.

(2) A specified party or accountable institution 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 collect 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 or accountable institution shall not carry out simplified customer due diligence measures under this section 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*) if any of the conditions set out in section 17 applies.

Monitoring complex, unusual and high risk transactions

25. (1) A specified party shall monitor and report on —

(*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 contravenes this section commits an offence and is liable to a fine not exceeding P1 500 000.

Failure to complete customer due diligence

26. (1) Where a specified party or accountable institution 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 16; or

(*c*) establish and verify the identity of the customer or other relevant person in accordance with section 16,

the specified party or accountable institution shall terminate an existing business relationship with a customer upon written notice to the customer.

(2) A specified party or accountable institution that terminates an existing business relationship in accordance with subsection (1) shall report a suspicious transaction to the Agency.

PART V — *Keeping of Records*

Keeping of records

27. (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;

(*e*) all accounts that are involved in a transaction concluded by a specified party in the course of a business relationship or single transaction;

(*f*) the name of the person who obtained the information referred to under paragraphs (*a*), (*b*) and (*c*) on behalf of the specified party; and

(*g*) 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) All information, data or documents collected under any customer due diligence process shall —

(*a*) be kept up to date;

(*b*) be updated every two years from the date a transaction is concluded; and

(*c*) be made available swiftly to domestic competent authorities upon appropriate authority.

Period records to be kept

28. (1) A specified party shall keep records obtained through customer due diligence measures, account files and business correspondences and results of any analysis undertaken for 20 years from the date a transaction is concluded and after the termination of a business relationship.

(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 27 for such longer period as may be specified in the request.

Records kept by third party

29. (1) The duty imposed under section 27 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 27, the specified party shall forthwith provide the Agency with such particulars of the third party as may be prescribed.

(3) Where a third party fails to perform the duties imposed under section 27 the specified party shall be liable for the failure.

Admissibility of electronic records Cap. 11:06

30. An electronic record kept in accordance with section 27, shall subject to the Electronic Records (Evidence) Act, be admissible as evidence in court.

Offences relating to records

31. (1) A specified party that fails to keep records in accordance with sections 27 and 28 shall be liable to a 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.

Access to records of specified party

32. (1) An examiner of the Agency or supervisory authority shall have access to any record kept in accordance with section 27 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 —

(*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 any 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) Any 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.

PART VI — *Reporting Obligation and Cash Transactions*

Reporting of suspicious transactions

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

(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*) management of 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 for 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 an accountable institution that contravenes this section commits an offence and is liable to a fine not exceeding P5 000 000 as may be imposed by a supervisory authority.

Cash transactions above prescribed limit

34. (1) Notwithstanding the provisions of section 33, a specified party or accountable institution 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 in excess of such amount as may be prescribed —

(*a*) is paid by the specified party or accountable institution 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 accountable institution 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 or an accountable institution that contravenes this section commits an offence and is liable to a fine not exceeding P1 000 000 as may be imposed by a supervisory authority.

General reporting

35. (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.

(3) A person who contravenes a provision of this section commits an offence and is liable to a fine not exceeding P250 000 or to imprisonment to a term not exceeding five years or to both.

Conveyance of cash
Act No. 33 of 2018
Act No. 34 of 2018

36. 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.

Wire transfer

37. (1) A specified party or accountable institution that through electronic transfer, receives into or sends out of Botswana money 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.

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

(3) A specified party or accountable institution that contravenes this section shall be liable to a fine not exceeding P5 000 000 as may be imposed by the supervisory authority.

Content of report

38. A report made under this Part shall be in such form as may be prescribed and shall include —

(*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.

Continuation of transaction

39. 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 16 (9) or the Agency directs otherwise.

Interruption of transaction by Agency

40. 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 —

(*a*) not to proceed with the transaction for such period not exceeding 10 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.

Offences relating to reporting

41. (1) A specified party or accountable institution that fails to make a report under this Part or continues with a transaction in contravention of section 40 shall be liable —

(*a*) a 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 24 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 46 (1).

(4) A person who contravenes 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

42. (1) No civil or criminal proceedings shall 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 46 (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

43. Any person responsible for ensuring compliance by a specified party or accountable institution who negligently fails to take such measures as are reasonably necessary to ensure such compliance, commits of 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

44. (1) Notwithstanding the provisions of section 6 (2) (*d*), a supervisory authority shall —

(*a*) regulate and supervise a specified party for compliance with this Act including through on-site examinations;

(*b*) in consultation with the Agency, issue instructions, guidelines or recommendations to help a specified party comply with this Act;

(*c*) in cooperation with the Agency, 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;

(*d*) maintain statistics concerning compliance measures adopted or implemented by the specified party and sanctions imposed on such specified party, under this Act; and

(*e*) conduct risk-based supervision of anti-money laundering, counter-financing of an act of terrorism and counter-financing of proliferation of arms of war or NBC weapons.

(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.

Obligations of accountable institutions

45. An accountable institution shall —

(*a*) have relevant documentation that explains its intended purpose and objectives;

(*b*) provide for proper record keeping of financial statements with a detailed breakdown of income and expenditure;

(*c*) have controls in place to ensure that all funds are fully accounted for and spent in a manner consistent with intended purposes and objectives; and

(*d*) maintain a record of domestic and international transactions.

Receipt of information by Agency

46. (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*) other administrative agencies of the Government; or

(*f*) an accountable institution which made the report.

(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 15 years or to both.

Referral of information by Agency

47. (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; or

Cap. 08:05

(*c*) a possible corruption offence, as defined in the Corruption and Economic Crime Act,

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

(4) For the purposes of subsections (1) and (3), '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.

Referral of information by supervisory authority

48. 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.

Membership of international financial organisation

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

(2) Where the Agency is granted recognition in accordance with subsection (1), the Agency may exchange financial information 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) Subject to subsection (5), 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) Where a request referred to in subsection (4) concerns information which has been provided to the Agency by a supervisory authority, an investigatory authority, a statutory body or government agency, the information shall not be disclosed without the consent of the appropriate supervisory authority, investigatory authority, statutory body or government agency.

(6) 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 on anti-money laundering, financing of an act of terrorism and financing of proliferation of arms of war or NBC weapons;

(*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.

Certificate issued by Agency

50. 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.

Information held by Agency

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

(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 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 VII — *General Provisions*

Confidentiality by Director General, etc.

52. (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) No 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 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

53. (1) A third party shall not disclose confidential information received from the Agency.

(2) A third party 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.

Declaration of assets by Director General, etc. Cap. 08:05

54. (1) Subject to subsection (2), the Director General and every officer of the Agency shall file with the Directorate on Corruption and Economic Crime established under the Corruption and Economic Crime Act, a declaration of his or her assets and liabilities in such form as may be prescribed —

(*a*) not later than 30 days after his or her appointment; and

(*b*) on the termination of his or her appointment.

(2) Where, subsequent to a declaration made under subsection (1), the value of assets and liabilities of the Director General or officer is so altered as to be reduced or increased in value by a minimum of P200 000, the Director General or officer shall make a fresh declaration.

(3) A declaration of assets filed under this section shall not be disclosed to any person except with the consent of the Director General or officer concerned or by order of a court.

Indemnity of Director General, etc.

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

(2) The Director General, officer of the Agency, specified party or accountable institution, its directors or senior management who receives and 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.

Power to amend Schedules

56. (1) The Minister may, by Order published in the *Gazette*, amend the Schedules to this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may amend Schedule I and III by —

(*a*) adding to the list, a specified party and an accountable institution used or likely to be used in future to commit a financial offence; or

(*b*) deleting from the list a specified party not used or unlikely to be used in future to commit a financial offence.

(3) 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.

Regulations

57. (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.

(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 11;12 and 13 or

(*e*) the manner and form which a specified party and an accountable institution shall keep records required under this Act.

Repeal of Cap. 08:07

58. (1) The Financial Intelligence Act (hereinafter referred to as the "repealed Act") is hereby repealed.

Savings

59. (1) Notwithstanding the repeal effected under section 58, 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.

(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
2. An accountant as defined under the Accountants Act, Cap. 61:05
3. A registered professional as defined under the Real Estate Professionals Act, Cap. 61:07
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. The Botswana Unified Revenue Service established under the Botswana Unified Revenue Services Act
15. Citizen Entrepreneurial Development Agency
16. Botswana Development Corporation
17. National Development Bank established under the National Development Bank Act, Cap. 74:05
18. A car dealership
19. A Money or value transfer services provider
20. An electronic Payment Service Provider
21. A Company Secretarial Service Provider
22. A savings and Credit Co-operative
23. A precious metal dealer as defined under the Unwrought Precious Metals Act, Cap. 20:03

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 National Sport Commission established under the Botswana Sport Commission Act, Cap. 60:01
9. The Botswana Accountancy Oversight Authority established under the Financial Reporting Act, Cap. 46:10
10. The Diamond Hub
11. The Director of Cooperative Development established under Co-operative Societies Act, Cap. 42:04
12. The Master of the High Court

SCHEDULE III

Accountable Institutions
(*section 2*)

Any legal entity registered or incorporated under any law.

PASSED by the National Assembly this 8th day of August, 2019.

BARBARA N. DITHAPO,
Clerk of the National Assembly.