

FINANCIAL INTELLIGENCE (AMENDMENT) ACT, 2018

No. 7



of 2018

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An Act to amend the Financial Intelligence Act.

Date of Assent: 29.06.2018

Date of Commencement: 29.06.2018

ENACTED by the Parliament of Botswana.

Short title	1. This Act may be cited as the Financial Intelligence (Amendment) Act, 2018.
General amendment to Cap. 08:07	2. The Financial Intelligence Act, (hereinafter referred to as “the Act”) is amended by substituting for the word “Director” whenever it appears in the Act, the words “Director General”.
Amendment of section 2 of the Act	3. Section 2 of the Act is amended by — (a) inserting in their correct alphabetical order, the following new definitions — “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; “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; “beneficial owner” means a natural person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, is the ultimate beneficiary of a share or other securities in a company; “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 person 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; “correspondent banking” means the provision of banking services by one bank to another;
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“credible sources” means a 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 an accountable institution or specified party;

“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 money laundering or financing of an act of terrorism, or financing of proliferation of arms of war or NBC weapon;
 - (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 a subject of an investigation by an investigatory or supervisory authority;
- or
- (h) that 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 weapon;
- (b) is subject to sanctions, embargos or similar measures issued by the United Nations Security Council;
- (c) is identified by the FATF or any such similar body to be a high risk jurisdiction; or
- (d) provides funding or support for terrorist activities or that has been designated as a country that supports terrorism or a country that allows high risk business;

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

“*Kgosi*” has the same meaning as assigned to it under the Bogosi Act;

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“legal arrangement” means express trusts or other similar arrangement;

“NBC weapon” means —

- (a) nuclear explosive device as defined in the Nuclear Weapons (Prohibition) Act;
- (b) biological or toxin weapons as defined in the Biological and Toxin Weapons (Prohibition) Act; or
- (c) chemical weapons as defined in the Chemical Weapons (Prohibition) Act;

“proliferation” means the manufacture, acquisition, possession, development, export, transshipment, 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 or an international organisation, his or her close associates or immediate member of the family 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 Councilor;
- (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;

“risk management systems” means policies, technologies, procedures and controls that enable a specified party or accountable institution to establish the risk indicators used to characterize clients, 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 money laundering, financing of an act of terrorism or financing of proliferation of arms of war or NBC weapon 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;

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“senior management” with respect to a legal person or legal arrangement means a director, controlling officer, partner or any person who is concerned with the management of its affairs;

“shell bank” has the same meaning assigned to it under the Banking Act; and

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“trust” means —

(a) an obligation imposed by trust deed or other instrument binding another person, the trustee to administer or dispose of property for the benefit of another person or class of persons or for the achievement of the object stated in the trust deed or other instrument; or

(b) an interest in property held by a trustee for the benefit of another person; and

(b) substituting for the definitions of “financial offence”, “money laundering”, “suspicious transaction”, “supervisory authority” and “transaction” respectively, the following new definitions —

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

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

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“supervisory authority” means a designated competent authority with responsibilities aimed at ensuring compliance by specified parties or accountable institutions;

“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 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 proliferation of arms of war or NBC weapon 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; and

“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;”.

Insertion of section 2A in the Act

4. The Act is amended by inserting immediately after section 2, the following new section —

“Conflict with other laws
2A. In the event of any conflict or inconsistency between the provisions of this Act and any other law on anti-money laundering, counter-financing of an act of terrorism or counter-financing of proliferation of arms of war or NBC weapon, the provisions of this Act shall take precedence.”.

Amendment of section 3 of the Act

5. Section 3 of the Act is amended by deleting subsection (2).

Insertion of section 3A in the Act

6. The Act is amended by inserting immediately after section 3, the following new section —

“Appointment of Director General
3A. (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 the Act.”.

7. Section 4 of the Act is amended —

Amendment of section 4 of the Act

(a) in subsection (1) by substituting for paragraph (c) appearing therein, the following new paragraph —

“(c) related to the financing of an act of terrorism or the financing of proliferation of arms of war or NBC weapon;” and

(b) in subsection (2) by —

(i) inserting immediately after paragraph (g), the following new paragraphs —

“(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.”.

8. Section 5 (1) of the Act is amended by deleting the word “of” where it first appears.

Amendment of section 5 of the Act

9. Section 6 (2) of the Act is amended by substituting —

Amendment of section 6 of the Act

(a) for the words “Ministry of Finance and Development Planning” appearing therein, the words “Ministry responsible for finance”; and

(b) for the words “Ministry of Foreign Affairs and International Cooperation” appearing therein, the words “Ministry responsible for international cooperation”.

10. Section 9 of the Act is amended —

Amendment of section 9 of the Act

(a) in subsection (1) by —

(i) substituting for paragraph (d), the following new paragraph —

“(d) implement and maintain a programme for anti-money laundering, counter-financing of an act of terrorism and counter-financing of proliferation of arms of war or NBC weapon, risk management systems and compliance”;

(ii) inserting immediately after paragraph (e), the following new paragraphs —

- “(f) conduct risk assessment on —
 - (i) business relationships and transactions,
 - (ii) pre-existing products, practices, technologies and delivery mechanisms,
 - (iii) new products, practices, technologies and delivery mechanisms, prior to their launch, and
 - (iv) life insurance services”;
- (g) implement programmes which have regard to identified money laundering, financing of an act of terrorism and financing of proliferation of arms of war or NBC weapon risks, commensurate to the size of the business; and
- (h) implement group-wide programmes against money laundering, terrorist financing and financing of proliferation of arms of war or NBC weapon which should be applicable and appropriate to all branches and majority owned subsidiaries of the financial group”;

(b) in subsection (3) by substituting for the word “P100 000” appearing therein, the word “P1 000 000”.

11. The Act is amended by inserting immediately after section 9, the following new sections —

Insertion of sections 9A, 9B, 9C and 9D in the Act

“Qualifications for compliance officers

- 9A. A compliance officer 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.

Conduct ongoing due diligence

9B. (1) A specified party shall, on an ongoing basis, conduct 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) A specified party that contravenes this section commits an offence and shall be liable to a fine not exceeding P1 500 000.

Monitoring complex, unusual and high risk transactions

9C. (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 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 shall be liable to a fine not exceeding P1 500 000.

Failure to complete due diligence

9D. 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 10; or
- (c) establish and verify the identity of the customer or other relevant person in accordance with section 10, the specified party or accountable institution shall terminate an existing business relationship with a customer upon written notice to the customer.”.

12. Section 10 of the Act is amended —

(a) in subsection (1) by —

(i) substituting for paragraph (a) the following new paragraph —
“(a) to establish and verify the identity of the customer, beneficial owner or beneficiary of life insurance and other related investment services;”,

(ii) inserting the following new paragraphs —

- “(d) to conduct enhanced due diligence when dealing with —
 - (i) a customer from a high risk jurisdiction, or at the instance of an international organisation, or
 - (ii) a transaction for a high risk business;
- (e) to obtain the following additional information on the customer —
 - (i) occupation of the customer or beneficial owner, and
 - (ii) the source of funds of the customer or beneficial owner;
- (f) to update regularly the identification data of the customer and beneficial owner;
- (g) to obtain additional information on the intended nature of the business relationship;

Amendment of section 10 of the Act

- (h) to obtain information on the reasons for intended purpose of transactions;
 - (i) to obtain the approval of senior management to establish or conclude a business relationship; and
 - (j) to conduct enhanced monitoring of the business relationship.”;
- (b) by inserting immediately after subsection (1), the following new subsection —
- “(1A.) Where a specified party engages with a prospective customer to establish a business relationship, the specified party shall obtain information to reasonably enable the specified party to determine whether future transactions to be performed in the course of the business relationship concerned are consistent with the specified party’s knowledge of that prospective customer, including information describing —
- (a) the nature of the business relationship;
 - (b) the intended purpose of the business relationship;
 - (c) the source of the funds which the prospective customer expects to use in concluding transactions in the course of the business relationship; and
 - (d) the approval by senior management before establishing or concluding a business relationship for high risk customers.”;
- (c) in subsection (3), by substituting for that subsection following new subsection —
- “(3) 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) a certificate of incorporation or a certificate of registration;
 - (d) a deed of trust; or
 - (e) such other identity document as the Minister may prescribe.”;
- (d) in subsection (4), by substituting for the word “P100 000” appearing therein, the word “P500 000” and for the words “five years” appearing therein, the words “10 years”; and
- (e) in subsection (5), by substituting for the word “P250 000” appearing therein, the word “P1 000 000”.

Insertion of sections 10A, 10B, 10C, 10D and 10E in the Act

13. The Act is amended by inserting immediately after section 10, the following new sections —

“Enhanced due diligence

10A. Where a person is acting on behalf of a partnership or acting in accordance with a legal arrangement, a specified party shall, in addition to customer due diligence under section 10 and in accordance with its risk management systems and compliance programme, establish —

- (a) the nature of the customer's business;
- (b) the ownership and control structure of the customer; and
- (c) the identity of the beneficial owner by determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person or legal arrangement.
- Prominent influential persons 10B. 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 shall —
- (a) obtain senior management approval before establishing the business relationship;
- (b) take reasonable measures to establish the source of funds of the prospective customer; and
- (c) conduct enhanced ongoing monitoring of the business relationship.
- Prohibition of anonymous accounts 10C. (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 shall be 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 10D. (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 shall be 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 10E. (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 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 shall be 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.

(4) For the purposes of this section “National Counter-Terrorism Committee” means the National Counter-Terrorism Committee established under the Counter-Terrorism Act.

Correspondent banking

10F. A financial institution that provides correspondent banking services shall —

- (a) gather sufficient information about a respondent bank to understand the nature of the respondent’s bank business;
- (b) determine, from publicly available information, the reputation of the respondent bank it proposes to enter into a correspondent banking relationship with;
- (c) be satisfied that the respondent bank has conducted customer due diligence on the customers having direct access to accounts of the correspondent bank;
- (d) be satisfied that a respondent bank does not permit its accounts to be used by a shell bank;
- (e) be satisfied that the respondent bank has provided relevant customer due diligence information upon request to a correspondent bank; and
- (f) enter into a correspondent banking relationship only with a financial institution that is supervised and regulated with regard to anti-money laundering, counter- financing of an act of terrorism and counter-financing of proliferation of arms of war or NBC weapon.

Enhanced due diligence measures relating to beneficiaries of life insurance services

10G. (1) Where a person is a beneficiary of a life insurance service, a specified party shall, in addition to customer due diligence, risk management systems and compliance programme, establish —

- (a) the identity of the beneficiary at the time of payout; or
- (b) the identity of the beneficial owner if the beneficiary is a legal person or arrangement.

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

- 14.** The Act is amended in section 11 by inserting immediately after subsection (2), the following new subsection —
- Amendment of section 11 of the Act
- “(3A) All information, data or documents collected under any customer due diligence process shall be —
- (a) kept up to date; and
- (b) updated every two years from the date a transaction is concluded.”.
- 15.** The Act is amended in section 12 by substituting for subsection (1), the following new subsection —
- Amendment of section 12 of the Act
- “(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 at least five years from the date a transaction is concluded and after the termination of a business relationship.”.
- 16.** The Act is amended in section 15 by —
- Amendment of section 15 of the Act
- (a) substituting for the word “P100 000” appearing in subsection (1), the word “P500 000”; and
- (b) substituting for the word “P100 000” appearing in subsection (2), the word “P500 000”, and the words “five years” appearing therein, the words “10 years”.
- 17.** The Act is amended in section 16(5) by substituting for the word “P100 000” appearing therein, the word “P5 000 000”, and the words “five years” appearing therein, the words “10 years”.
- Amendment of section 16 of the Act
- 18.** The Act is amended by substituting for section 17, the following new section —
- Amendment of section 17 of the Act
- “Reporting suspicious transactions
17. (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.

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(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.

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(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 shall be liable to a fine not exceeding P5 000 000 as may be imposed by a supervisory authority.”.

Amendment of section 18 of the Act

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

“Cash transactions above prescribed limit

18. (1) Notwithstanding the provisions of section 17, a specified party or accountable institution shall, within such period as may be prescribed, 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 shall be liable to a fine not exceeding P1 000 000 as may be imposed by a supervisory authority.”.

Amendment of section 19 of the Act

20. The Act is amended in section 19 (3) by substituting for the word “P50 000” appearing therein, the word “P250 000” and for the words “three years” appearing therein, the words “five years”.

Amendment of section 20 of the Act

21. The Act is amended by substituting for section 20, the following new section —

“Conveyance of money
Cap. 50:01

20. Subject to the Customs and Excise Duty Act, the Revenue Service 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.”.

Amendment of section 21 of the Act

22. The Act is amended in section 21 by —

- (a) inserting immediately after the words “specified party” wherever they appear in the section, the words “or accountable institution”; and
- (b) by substituting for the word “P 1000 000” appearing in subsection (2), the word “P 5000 000”.

23. The Act is amended by inserting immediately after section 21, the following new section —

“Wire transfer

21A. (1) A specified party undertaking a wire transfer shall require the following —

- (a) the originator’s account number or unique transfer reference number or in the absence of a unique transaction reference, other identifying information for tracing the transaction as may be applicable;
- (b) the originator’s address and national identity or customer identification number;
- (c) the name of the beneficiary;
- (d) the beneficiary account number, where such an account is used to process the transaction, or a unique transfer reference number; and
- (e) the source and purpose of funds.

(2) A specified party referred to under subsection (1), shall verify the originator’s identity before a wire transfer is ordered and maintain this information.

(3) A specified party shall take reasonable measures, including post-event monitoring or real-time monitoring, where feasible to identify cross border wire transfer.

(4) The information referred to under subsection (1) shall be made available within three working days of receiving a request from the beneficiary financial institution or a competent authority.

(5) A specified party shall capture information of the customer and the beneficiary for domestic and cross border wire transfers.”.

Insertion of section 21A in the Act

24. The Act is amended in section 23 by inserting immediately after the words “specified party” appearing therein, the words “, accountable institution”.

Amendment of section 23 of the Act

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

“Interruption of transaction by Agency

24. 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, accountable institution, the person who made the report or a 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,

Amendment of section 24 of the Act

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.”.

Amendment of section 25 of the Act

26. The Act is amended by substituting for section 25, the following new section —

“Offences relating to reporting

25. (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 24, shall be liable to —

- (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 shall be 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 —

- (a) is involved in reporting under this Part;
- (b) knows or has a reason to suspect that an authorised officer is acting or is proposing to act in connection with an investigation which is being or is about to be conducted under or for purposes of this Act; or
- (c) knows by virtue of scope of his or her duty or has a reason to suspect that a disclosure has been made to an authorised officer under this Act,

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 28 (1).

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

Insertion of section 26A in the Act

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

“Offences for non-compliance

26A. 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 an offence and shall be liable to a fine not exceeding P 250 000 or imprisonment for a term not exceeding five years, or to both.”.

Amendment of section 27 of the Act

28. Section 27 (1) of the Act is amended by inserting immediately after paragraph (d), the following new paragraph —

- “(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 weapon.”.

29. The Act is amended by inserting immediately after section 27, the following new section —

Insertion of section 27A in the Act

“Obligations of accountable institutions

- 27A. 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.”.

30. The Act is amended in section 28 by —

Amendment of section 28 of the Act

- (a) inserting immediately after subsection (1) (e), the following new paragraph —
 - “(f) an accountable institution which made the report.”;
- (b) substituting for subsection (2), the following new subsection —
 - “(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.”;
- (c) inserting immediately after subsection (2), the following new subsection —
 - “(2A) 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.”; and
- (d) substituting in subsection (3) for the word “P100 000” appearing therein, the word “P1 000 000”, and the words “five years” appearing therein, the words “15 years”.

31. The Act is amended in section 31 by substituting for subsection (6), the following new subsection —

Amendment of section 31 of the Act

- “(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;

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- (d) investigations on anti-money laundering, financing of an act of terrorism and financing of proliferation of arms of war or NBC weapon;
- (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.”.

Amendment of section 32 of the Act

32. The Act is amended in section 32 by inserting the word “report” immediately after the word “original” appearing therein.

Amendment of section 33 of the Act

- 33.** The Act is amended in section 33 by —
- (a) substituting for the word “Agency” appearing in subsection (2) (c), the words “Director General”; and
 - (b) substituting for the word “P50 000” appearing in subsection (3) the word “P1 000 000”, and the words “three years” appearing therein, the words “10 years”.

Insertion of section 34A in the Act

34. The Act is amended by, inserting immediately after section 34, the following new section —

“Confidentiality by third parties 34A. (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 shall be liable to a fine not exceeding P1 000 000 or to imprisonment for a term not exceeding five years, or to both.”.

Amendment of section 36 of the Act

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

“Indemnity of Director General, etc. 36. (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.”.

Amendment of section 37 of the Act
Amendment of section 38 of the Act

36. The Act is amended by deleting section 37.

37. The Act is amended by substituting for section 38, the following new section —

“Amendment of Schedule 38. (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.”.

38. The Act is amended by deleting section 39.

Amendment of section 39 of the Act
Amendment of section 40 of the Act

39. The Act is amended by substituting for section 40, the following new section —

“Regulations

40. (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 section 9; or
- (e) the manner and form a specified party and an accountable institution shall keep records required under this Act.”.

40. Schedule I of the Act is amended by —

(a) substituting for the words —

- (i) “7. A casino as defined under the Casino Act, Cap. 19:01” the words “7. A casino as defined under the Gambling Act, Cap. 19:01”,
- (ii) “8. A Non Bank Financial Institution as defined in the Non Bank Financial Institutions Regulatory Authority Act, Cap. 46:08” the words “8. A Non-Bank Financial Institution as defined in the Non-Bank Financial Institutions Regulatory Authority Act, Cap. 46:08”, and
- (iii) “19. Money remitters”, the words “19. A money or value transfer services provider”, and

(b) inserting immediately after the last entry therein, the following new entries —

Amendment of Schedule I of the Act

Amendment of
Schedule II of
the Act

- “20. An Electronic Payment Service Provider;
- 21. A Company Secretarial Service Provider;
- 22. An International Financial Services Centre company as defined under the Income Tax Act, Cap. 52:01;
- 23. A Savings and Credit Co-operative; and
- 24. A precious metal dealer as defined under the Unwrought Precious Metals Act, Cap. 20:03.”.

41. Schedule II of the Act is amended by —

(a) substituting for the words —

- (i) “2. The Registrar of Companies as defined in the Companies Act, Cap. 42:01” the words “2. The Companies and Intellectual Property Authority established under the Companies and Intellectual Property Act, Cap. 42:13”,
- (ii) “4. The Casino Control Board established under the Casino Act, Cap. 19:01” the words “4. The Gambling Authority established under the Gambling Act, Cap. 19:01”,
- (iii) “6. Non Bank Financial Institution Regulatory Authority established under the Non Bank Financial Institution Regulatory Authority Act, Cap. 46:06” the words “6. Non-Bank Financial Institutions Regulatory Authority established under the Non-Bank Financial Institutions Regulatory Authority Act, Cap. 46:06”, and
- (iv) “8. Botswana Institute of Accounts established under the Accountants Act, Cap. 61:05”, the words “8. The Botswana Institute of Chartered Accountants established by Accountants Act, Cap. 61:05”, and

(b) inserting after the last entry appearing therein, the following —

- “10. The Botswana National Sports Commission established under Botswana National Sport Commission Act, Cap. 60:01;
- 11. The Botswana Accountancy Oversight Authority established under Financial Reporting Act, Cap. 46:10;
- 12. The Botswana Communications Regulatory Authority established under Communications Regulatory Authority Act, Cap. 72:03;
- 13. The Botswana Investment and Trade Centre established under Botswana Investment and Trade Centre Act, Cap. 42:12;
- 14. The Ministry responsible for trade and investment;
- 15. The Diamond Hub; and
- 16. The Director of Co-operative Development established under Co-operative Societies Act, Cap. 42:04.”.

Insertion of
Schedule III to
the Act

42. The Act is amended by inserting immediately after Schedule II, the following new Schedule —

“ SCHEDULE III
Accountable Institutions
(*section 2*)

Any legal entity registered or incorporated under any law.”.

PASSED by the National Assembly this 18th day of June, 2018.

BARBARA N. DITHAPO,
Clerk of the National Assembly.