

Statutory Instrument No. 74 of 2013

FINANCIAL INTELLIGENCE ACT
(Cap. 08:07)

FINANCIAL INTELLIGENCE REGULATIONS, 2013
(Published on 21st June, 2013)

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IN EXERCISE of the powers conferred on the Minister of Finance and Development Planning by section 40 of the Financial Intelligence Act, the following Regulations are hereby made —

PART I — *Preliminary*

Citation	1. These Regulations may be cited as the Financial Intelligence Regulations, 2013.
Interpretation	2. (1) In these Regulations, unless the context otherwise requires — “business relationship” means an arrangement between a customer and a specified party for the purpose of concluding transactions on a regular basis; “beneficial owner” means, in relation to a customer who is a — (a) juristic person, the natural person who ultimately owns and controls the customer; and (b) natural person, any natural person or group of persons who ultimately benefits from a business relationship or single transaction entered into by such customer;
Cap. 42:01	“close company” has the same meaning assigned to it under the Companies Act; “company” has the same meaning assigned to it under the Companies Act; “document” means an original document or copy of the original document certified to be a true copy by a commissioner of oaths; “entity” means an association, a government department, a non-governmental organisation, an international organisation, an intergovernmental organisation and includes a legal person other than a Botswana company or close company or a foreign company; “establishing” in relation to establishing the identity of a customer in terms of these Regulations means a two tier process consisting of ascertainment and verification referred to in subregulation (2); and “establish” shall be construed accordingly; “foreign company” has the same meaning assigned to it under the Companies Act; “guidance notes” means guidelines issued in terms of section 27 (1) (b) of the Act which may differ for different specified parties or persons or categories of specified parties or persons and for different categories of transactions concerning — (a) the verification of customer identities; (b) reporting of suspicious and unusual transactions; and (c) any other obligations imposed on the specified party and supervisory authority under the Act;
Cap. 01:02	“identity card” has the same meaning assigned to it under the National Registration Act; “manager” in respect of a local or foreign company, means the natural person who is the principal executive officer of the company by whatever name he or she may be designated and whether or not he or she is a director of that company; and

“trust” means the obligation imposed by trust deed or other trust instrument binding another person, the trustee to administer or dispose of property for the benefit of the other person or class of persons or for the achievement of the object stated in the trust deed or other trust instrument,

but does not include the situation where the property of another is to be administered by a person as executor, tutor or curator, or a trust established by virtue of a testamentary writing or court order, or a trust established by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund, whether in Botswana or elsewhere.

(2) For the purpose of establishing the identity of a customer in terms of these Regulations —

- (a) the process of ascertainment referred to in subregulation (1) includes the act of obtaining information either orally or in writing or through some other means without verifying the truth of the information so received; and “ascertain” shall be construed accordingly; and
- (b) the process of verification means the act of establishing the truth of information received through the process of ascertainment by comparing such information received with reliable documentation; and “verify” and “verifying” shall be construed accordingly.

PART II — *Establishment and Ascertainment of Information*

3. (1) Subject to subregulation (2), a specified party may not establish or maintain a business relationship or conclude a transaction with a customer where the specified party has actual knowledge of the fact that or reasonably believes the customer to be conducting such business relationship or transaction under a fictitious or false name.

Identification
of customer by
specified party

(2) To ensure that a business relationship is not established or maintained or that a transaction is not concluded under a fictitious or false name, a specified party shall, in accordance with these Regulations, regarding ascertainment and verification of identity, establish the identity of every customer with whom the specified party establishes a business relationship or concludes a transaction with.

(3) Where the specified party established a business relationship with a customer prior to the commencement of these Regulations and such specified party has actual knowledge of the fact or reasonably believes that such a business relationship exists upon or continues to exist after commencement of these Regulations, the specified party shall establish the identity of such customer before concluding any transaction with the customer in the course of that relationship, and the specified party may consult the Agency for assistance with the administration of these Regulations.

4. (1) For the purposes of establishing the identity of a customer under section 10 of the Act, the specified party shall comply with these Regulations regarding ascertainment and verification of identity.

Establishing
identity of
customer

(2) Notwithstanding regulation 3 or any other provision of these Regulations requiring compliance with the establishment of the identity of a customer or beneficial owner, a specified party shall, where such regulation or other provisions regarding establishment cannot, due to impossibility or reasonable impracticability, be complied with, the specified party shall —

- (a) as far as it is reasonably possible, take steps to ascertain or verify such identity; and
- (b) without delay give written notice to the Agency of such impossibility or impracticability indicating any alternative measures used to identify or verify the identity.

(3) Notwithstanding anything to the contrary, a specified party may establish a business relationship or take preparatory steps to conclude a transaction before verifying the identity of a customer but shall comply with the provisions of these Regulations regarding verification of such customer's identity prior to such customer receiving any benefit from the transaction.

(4) The steps to be taken for establishing the identity of a customer under section 10 of the Act may be completed by the employee or other representative of the specified party, but the specified party shall take reasonable steps to ensure that the person is sufficiently trained and resourced to ensure compliance with those procedures.

Ascertainment
of information
concerning
natural persons

5. (1) For purposes of ensuring compliance with these Regulations and with the Act, where a specified party seeks to establish the identity of a natural person, the specified party shall ascertain the following in relation to the person —

- (a) the person's full name;
- (b) the person's nationality;
- (c) where the person is a citizen or resident of Botswana, the identity card number and date of birth of such person;
- (d) where the person is not a citizen or resident of Botswana, the passport number and date of birth of such person;
- (e) the person's residential address in Botswana where the person is a citizen or resident of Botswana;
- (f) where the person is not a citizen or resident of Botswana, the residential address in his or her country of domicile and physical address in Botswana;
- (g) the person's contact details;
- (h) the person's occupation or source of income;
- (i) nature and location of business activities, if any; and
- (j) the source of funds involved in the transaction.

(2) If the person referred to in subregulation (1) does not have the legal capacity to establish a business relationship or conclude a transaction without the assistance of another person, the specified party shall ascertain the particulars referred to in subregulation (1) (a) to (f) in relation to the person who provided such assistance.

6. For the purposes of ensuring compliance with these Regulations and the Act, where a specified party seeks to establish the identity of a company, foreign company or close company wishing to conclude a business relationship or transaction with that specified party, the specified party shall ascertain —

- (a) the registered name and registration number of the company;
- (b) if it is an external company, the name under which it conducts business in the country in which it is incorporated;
- (c) if the external company conducts business in Botswana using a name other than the name specified under paragraph (a) or (b), the name used in Botswana;
- (d) if it is an external company, the registered address from which it operates in the country where it is incorporated or if it operates from multiple addresses in that country, the address of its head office;
- (e) if the company or close company operates within Botswana, the address from which it operates in Botswana, or if it operates from multiple addresses within Botswana, the address of the office seeking to establish a business relationship or to conclude a transaction with the specified party;
- (f) the nature of its business;
- (g) the income tax and value added tax registration numbers of the company or close company issued by Botswana Unified Revenue Service, or if incorporated outside Botswana, such numbers issued by a similar revenue office in the country in which it is incorporated if such numbers were issued; and
- (h) the particulars referred to in regulation 5 (1) (a), (b) or (c) whichever is applicable concerning —
 - (i) the manager of the company, or in the case of a close company, each member, or
 - (ii) each natural person who purports to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the company or close company.

Ascertainment
of information
concerning
companies
and close
companies

7. A specified party shall ascertain, in respect of any entity —

- (a) the registered name and registration number of the entity, if registered;
- (b) the office or place of business, if any, from which the entity operates;
- (c) the entity's principal activities;
- (d) the full name, residential address if available, and any one of the following details of the natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the entity, the person's —
 - (i) identity card number and date of birth, where the natural person is a citizen of Botswana, or
 - (ii) passport number and date of birth, where the natural person is not a citizen or resident of Botswana.

Ascertainment
of information
concerning
other entities

Ascertainment
of information
concerning
partnerships

8. A specified party shall ascertain in respect of a partnership, the partnership's —

- (a) registered name;
- (b) office or place of business, if any, or where applicable, its registered address;
- (c) registration number; and
- (d) full name, residential address if available, and any one of the following details of each partner, including silent partners in a limited partnership and any other natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the partnership —
 - (i) the identity card number and date of birth, where the natural person is a citizen of Botswana, or
 - (ii) the passport number and date of birth, where the natural person is a not a citizen or resident of Botswana.

Ascertainment
of information
concerning
trusts

9. (1) A specified party shall ascertain in respect of a trust —

- (a) its registered name and the registration number, if any;
- (b) the country where it was set up, if the trust was set up in a country other than Botswana;
- (c) the management company of the trust, if any;
- (d) the full name of the trust if not registered;
- (e) the residential address, contact details and particulars listed in the order of preference under paragraph (f) of each natural person who purports to be authorised to establish a business relationship or to conclude a transaction with the specified party on behalf of the trust; and
- (f) the full name of the trustee, beneficiary referred to by name in the trust deed or other founding instrument in terms of which a trust is created and the founder of the trust and any of the following details —
 - (i) identity card number and date of birth where the person is a citizen of Botswana, or
 - (ii) passport number and date of birth where the person is not a citizen or resident of Botswana.

(2) If the beneficiaries of the trust are not referred to by name in the trust deed or founding instrument in terms of which the trust is created, the specified party shall follow the procedure in regulation 4 (2) to ascertain the identity of the beneficiaries.

Additional
requirements
when person
acts on authority
of another

10. When a representative or agent acting on behalf of another person seeks to establish a business relationship or conclude a transaction with a specified party, the specified party shall —

- (a) take reasonable steps to ensure that the representative is authorised or has a power of attorney to act on behalf of the other person; and
- (b) establish the identity of the representative as well as the identity of that other person in terms of these Regulations.

PART III — *Verification of Information*

11. (1) Any information or particulars ascertained by a specified party as required under Part II of these Regulations shall as far as is reasonably practicable in the circumstances, be verified by the specified party by comparing such information obtained with the applicable and corresponding information set out in the following documentation —

Verification of information

- (a) a trust instrument or deed of trust;
- (b) a national identification document issued by the person's country of origin, domicile or citizenship;
- (c) a passport;
- (d) a birth certificate;
- (e) any document of authorisation to act on behalf of such person, company, trust or other entity;
- (f) a constitution or close company's certificate of incorporation, founding statement or partnership agreement, if any, or other similar documentation including notification of situation of registered and business address; or
- (g) any reliable document, data or information that reasonably serves to verify any of the information obtained by the specified party in ascertaining the information set out in Part II of these Regulations.

(2) If it is believed to be reasonably necessary, taking into account any guidance notes concerning the verification of identity that may apply to a specified party, the specified party shall, in addition to the verification undertaken in terms of subregulation (1), verify any of the information or particulars ascertained as part of establishing identity by comparing such particulars with any applicable and corresponding reliable document, data or information.

12. Where a specified party ascertained information in terms of these Regulations about a natural or legal person, partnership, trust or other entity without contact in person, whether with the natural person or with the representative of the natural or legal person, partnership, trust or other entity, the specified party shall take reasonable steps to ensure the existence and to establish the identity of that natural or legal person, partnership, trust or other entity taking into account any guidance notes concerning the verification of identities that may apply to that specified party and, where the customer is a natural person by —

Verification in absence of contact with person

- (a) obtaining a reference from a well known professional, an employer of the customer of the specified party, or a known customer of the specified party who knows the natural person; or
- (b) requesting an original recent council rates or utility bill receipt.

13. A specified party shall take reasonable steps, taking into account any guidance notes which may apply to that specified party in respect of an existing business relationship to maintain the correctness of particulars which are susceptible to change and which particulars were ascertained under these Regulations or the Act for the purpose of establishing identity.

Specified party maintains correctness of particulars

Customer
acceptance
policy

14. (1) A specified party shall ensure that a customer acceptance policy that is to be implemented and maintained in terms of section 9 (1) of the Act is comprehensive and includes clear guidelines and criteria as to —

- (a) the information required and methods to be used in ascertaining and verifying the identity and acceptance of current and prospective customers in accordance with these Regulations; and
- (b) any guidance notes which shall set out international standards to be met in respect of customer due diligence.

(2) The information required as part of the specified party's customer acceptance policy shall include —

- (a) relevant information pertaining to the customer's background;
- (b) the customer's country of origin and residence;
- (c) any linked accounts that the customer or any other party to the business relationship or transaction may have with the specified party;
- (d) the nature and location of the customer's business activities as well as the nature and source of personal income;
- (e) the volume or expected volume of transactions in which the customer engages or is suspected to engage in;
- (f) the customer's business partners; and
- (g) any other information that may assist the specified party to determine whether the business relationship with the customer may be vulnerable to money laundering or proceeds of any other crime.

PART IV — *Keeping of Records*

Keeping of
records

15. (1) A specified party shall in addition to its responsibility under section 11 of the Act to keep records, keep a copy of each report sent to the Agency in terms of section 17 of the Act as well as copies of records and documents supporting the report in a manner that allows any additional information requested under section 12 of the Act to be forwarded without delay to the person requesting the additional information.

(2) The Agency shall keep a copy of each report received under section 28 of the Act.

(3) Every copy, record or document referred to in subregulations (1) and (2) shall be kept —

- (a) for a period of at least five years from the date of filing the report with the Agency; and
- (b) in the manner that protects the confidentiality of the copy, record or document involved.

Record keeping
by third parties

16. (1) The specified party shall, where a third party keeps records on behalf of the specified party in terms of section 13 of the Act, ensure it has sufficient access to such records in order to comply with its obligations under the Act without undue delay.

(2) A specified party shall, in terms of section 13 (2) of the Act provide the Agency with the identification and contact details of the third party referred to in subregulation (1), including the following particulars —

- (a) the third party's full name, if the third party is a natural person or registered name, if the third party is a company or close corporation;
- (b) the name under which the third party conducts business;
- (c) the full name and contact details of the individual who exercises control over access to records kept under subregulation (1);
- (d) the physical address where the records are kept;
- (e) the address from where the third party exercises control over the records; and
- (f) the full name and contact details of the individual who liaises with the third party on behalf of the specified party concerning the retention of the records.

PART V — *Reporting of Suspicious Transactions*

17. (1) Subject to subregulation (2), a suspicious transaction report required to be made under section 17 and 19 of the Act shall be made in the Form set out in the Schedule and shall be sent electronically to the Agency by means of an internet based reporting portal provided by the Agency for this purpose.

Manner of reporting

(2) Where a person or specified party required to make a report under subregulation (1) does not have the technical capability, or for any other reason, is unable to make a report in the manner required under subregulation (1), the person or the specified party shall complete the required form in writing and include such further information as may be requested by the Agency and —

- (a) send it by facsimile to the Director at the number specified in writing by the Agency from time to time;
- (b) deliver it to the Agency; or
- (c) send it by another method determined by the Agency whether as an alternative means or as an exclusive means.

(3) Where a person or a specified party makes a report to the Agency, the Director shall for purposes of section 4 (2) (f) of the Act, ensure that feedback is given to the person making the report or the specified party within 14 working days from the date of receipt of the report.

18. A report made in terms of section 17 or 19 of the Act shall be sent to the Agency as soon as possible but not later than 15 working days, after the suspicion arose concerning the transaction that gave rise to the need to report, unless the Agency, in writing, approves the sending of the report after the expiry of the period.

Period of reporting

19. (1) For the purposes of section 21 of the Act, a specified party that through electronic transfer, receives into or sends out of Botswana, money in excess of P10 000, on behalf or on the instruction of a customer or any person shall report to the Agency such transaction.

Reporting of electronic transfers of money into or out of Botswana

(2) Where the specified party makes a report concerning an electronic transfer of money in excess of P10 000, received into or sent out of Botswana in terms of section 21 of the Act, the report shall contain, in respect of —

- (a) the natural or legal person making the report or other entity on whose behalf the report is made —
 - (i) the name of the person or entity,
 - (ii) the identity card number where the natural person who makes the report is a citizen of Botswana, or passport number where the natural person is not a citizen or resident of Botswana,
 - (iii) registration number where report is made on behalf of a legal person,
 - (iv) the address of the person or entity,
 - (v) the type of business or economic sector of the specified party and the reporting institution,
 - (vi) where the person making the report is a natural person, the natural person's contact details, and
 - (vii) where the person making the report is a legal person or other entity, the surname, initials and contact details of a contact person;
- (b) the transaction which is reported under section 21 of the Act, full particulars of —
 - (i) the amount of money transferred,
 - (ii) the value date on which the electronic transfer was effected,
 - (iii) the currency transferred and value thereof in Botswana on the date of transfer,
 - (iv) the unique transaction reference number allocated to the transaction,
 - (v) the account number concerned, where the money transferred is debited from an account held at a sending specified party, or where the money received is credited to an account held at receiving specified party, and
 - (vi) the intended purpose of the electronic money transfer as stated by the customer of the specified party making the report;
- (c) the customer of a specified party on whose behalf or instruction money is received into or sent out of Botswana —
 - (i) where the customer is a natural person, the name and surname, or initials and surname, identity card number or passport number and date of birth,
 - (ii) where the customer is a legal person or other entity, the name of such legal person or entity, registration number if any and the name of the natural persons with authority to conduct the transaction on behalf of the legal person or other entity, and
 - (iii) business or residential address and contact details of the customer or the natural person acting on behalf of the customer where the customer is a legal person or other entity;
- (d) the recipient of money sent out of Botswana, or the sender of the money in excess of P10 000 received into Botswana —
 - (i) the full names of the recipient or sender,
 - (ii) the date of birth of the recipient or the sender,
 - (iii) identity card number or passport number of the recipient or sender,
 - (iv) a business or residential address of the recipient or sender, and
 - (v) contact details of the recipient or the sender.

(3) A report made under section 21 of the Act shall be sent to the Agency as soon as possible, but not later than two working days after the specified party or any of its employees has become aware of the fact that an electronic transfer of money received into or sent out of Botswana has exceeded the amount of P10 000.

20. (1) For the purposes of sections 23 and 24 of the Act and in order to facilitate the recognition and handling by a specified party of a suspected financial offence, where —

- (a) the suspicion arises that is a basis for the specified party making a report under section 17 or 19 of the Act regarding a transaction; and
- (b) it is reasonably foreseeable that carrying out that transaction or other related transaction will jeopardise any investigations or proceedings or where the transaction will or is likely to result in such proceeds being put beyond the reach of Botswana authorities,

the specified party shall in addition to making the report within the time period specified under regulation 18, contact as soon as reasonably possible, the Director or officers of the Agency at such contact details as may be specified in writing by the Agency from time to time for the purposes of consultation and intervention as provided for under section 24 of the Act.

(2) If after consultation, the Agency considers it necessary that the specified party may proceed with the transaction or any other transaction in respect of funds contemplated in section 24 of the Act, the specified party may continue with and carry out any such transaction as provided under section 23 of the Act.

21. (1) The Agency shall analyse all the information and reports received by it for the purpose of determining whether any information contained in a report constitutes reasonable grounds to suspect that —

- (a) a person or a specified party has committed any act or omission which constitutes an offence under the Act or these Regulations; or
- (b) a person has committed an offence under the Proceeds of Serious Crime Act.

(2) Where the Agency has reasonable grounds, after analysing the reports submitted to it under subregulation (1), to suspect that a person or a specified party has committed an offence, it shall refer the matter, together with any recommendations the Agency may consider appropriate, to the relevant investigating authority.

PART VI — *Compliance Programmes*

22. (1) A specified party shall adopt, develop and implement a programme which ensures compliance with obligations of the specified party under the Act and these Regulations.

(2) Subject to regulations 23 and 24, a specified party shall adopt, develop and implement as part of the compliance programme referred to in subregulation (1), internal rules which —

- (a) confirm the responsibility of the management of the specified party in respect of compliance with the Act and the internal rules;
- (b) provide for the necessary procedures to ensure that customers are identified and the required particulars concerning the identities are verified;

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tion and
intervention
by Agency

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of reports
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referral of
suspected
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programmes
to be imple-
mented by
specified party

- (c) provide for the necessary procedures including effective ongoing monitoring systems to enable staff to recognise potentially suspicious and unusual transactions or series of transactions and to report such suspicious transactions in terms of these Regulations;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning record keeping are complied with;
- (e) provide for disciplinary steps to be taken against the relevant staff members for non-compliance with the internal rules; and
- (f) take into account any guidance notes concerning duties that may apply to the specified party.

(3) Where a specified party has employees, agents or persons authorised to act on its behalf in the programme referred to in subregulation (1), the specified party shall furthermore include as far as practicable, an ongoing compliance training programme for those employees, agents or persons to ensure that they are able to comply with the duties of the specified party.

(4) A specified party that designates a compliance officer under section 9 (1) (b) of the Act shall take reasonable steps to ensure that the compliance officer has training and resources to discharge his or her obligations, and keep records of the said training for a period stipulated in section 12 of the Act.

(5) A specified party shall adopt an independent audit function to ensure compliance with this regulation.

Internal rules concerning ascertainment and verification of identities

23. A specified party shall have rules concerning the establishment and verification of identities which shall —

- (a) provide for the necessary processes and working methods which will ensure that the required particulars concerning the identities of the parties to a business relationship or transaction are obtained on each occasion when a business is established or a transaction is concluded with the specified party;
- (b) provide for the steps to be taken by the relevant staff members aimed at the verification of the required particulars concerning the identities of the parties to a business relationship or transaction;
- (c) provide for the responsibility of the management of the specified party in respect of compliance with the Act, and the internal rules regarding ascertainment and verification of identity;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the ascertainment and verification of identities are complied with;
- (e) provide for disciplinary steps against members concerned for non-compliance with the Act and the internal rules regarding the ascertainment and verification of identities; and
- (f) take into account any guidance notes concerning the ascertainment and verification of identities which may apply to the specified party.

Internal rules concerning keeping of records

24. A specified party shall have internal rules concerning the keeping of records in terms of section 11 of the Act which shall —

- (a) provide for the necessary processes and working methods to ensure that relevant staff members of the specified party obtain the information pertaining to which records shall be kept on each occasion when a business relationship is established or a transaction is concluded with the specified party;

- (b) provide for the responsibility of the management of the specified party in respect of compliance with the Act and internal rules regarding the keeping of records;
- (c) allocate responsibilities and accountability to ensure that requirements concerning the keeping of records are complied with;
- (d) provide for disciplinary steps against members of staff concerned for non-compliance with the internal rules regarding the keeping of records;
- (e) provide for the necessary processes and working methods to ensure that the accuracy and the integrity of the records is maintained for the entire period for which they must be kept;
- (f) provide for the necessary processes and working methods to ensure that access required or authorised under the Act by the relevant staff members to the records can be obtained without undue hindrance; and
- (g) take into account any guidance notes concerning the keeping of records which may apply to the specified party.

25. A specified party shall have rules concerning the reporting of suspicious and unusual transactions which shall —

- (a) provide for the necessary processes and working methods which will ensure that suspicious transactions are reported without undue delay;
- (b) provide for the necessary processes and working methods to enable staff to recognise potentially suspicious transactions or series of transactions;
- (c) provide for the responsibility of the management of the specified party in respect of compliance with the Act and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the reporting of suspicious transactions are complied with;
- (e) provide for disciplinary steps against members concerned for non-compliance with the internal rules regarding the reporting of suspicious and unusual transactions; and
- (f) take into account any guidance notes concerning the reporting of suspicious transactions which may apply to the specified party.

Internal rules
concerning
reporting of
suspicious
transactions

PART VII — *Miscellaneous*

26. (1) In order to carry out an examination of records as contemplated under section 16 of the Act, an examiner of the Agency or supervisory authority may —

- (a) at any time during normal office hours without previous notice, enter any premises occupied by a specified party and require production to him or her of any or all the specified party's securities, books, records, accounts or documents;
- (b) search any premises occupied by a specified party for any moneys, securities, books, records, accounts or documents;
- (c) open or cause to be opened any strong room, safe or other container in which it is suspected that any moneys, securities, books, records, accounts or documents of a specified party are kept;

Powers of
examination

- (d) examine and make copies of and extracts from any securities, books, records, accounts and documents of a specified party or, against a full receipt issued by the Agency or supervisory authority for such securities, books, accounts or documents and remove them temporarily from the premises of the specified party for that purpose;
 - (e) require an explanation of any entries in the books, records accounts or documents of a specified party;
 - (f) against a full receipt issued by the Agency or supervisory authority, seize any securities, books, records, accounts or documents of a specified party which in his or her opinion may serve evidence for an offence or irregularity; and
 - (g) retain any such seized securities, books, records, accounts or documents for as long as they may be required for criminal or other proceedings.
- (2) A person shall, when requested under subregulation (2) by the Agency or supervisory authority to do so, produce every security, book, record, account or document of a specified party to which such person has access, and shall, at the request of the agency or supervisory authority, provide any information at such person's disposal relating to the affairs of the specified party.
- (3) The Agency or supervisory authority may further inspect the securities, books, records, accounts or documents of any person, partnership or company —
- (a) where the Agency or supervisory authority has reason to believe that a specified party whose affairs are being inspected has or had a direct or indirect interest in or in the business of the person, partnership or company;
 - (b) where the Agency or supervisory authority has reason to believe that the person, partnership or company has or had a direct or indirect interest in the business of a specified party; and
 - (c) where the Agency or supervisory authority considers it necessary for a proper inspection of the affairs of a specified party that those securities, books, records, accounts or documents be inspected,
- and the provisions of subregulations (1) and (2) shall with such modifications as may be necessary, apply in respect of an inspection under this subregulation:
- (4) For the purposes of subregulation 3 (b), a person who holds shares as a nominee or in trust for another person in a specified party shall be considered to have an interest in the specified party and shall upon request of the Agency or supervisory authority disclose the name of that other person.
- (5) A lawful representative of a specified party of which the securities, books, records, accounts or documents have been retained under subregulation (1) (f), may examine, make entries in and make extracts from such securities, books, records, accounts or documents during office hours and under supervision as the Agency or supervisory authority may consider necessary.
- (6) Where securities, books, records, accounts or documents of a specified party have been seized under subregulation (1), the specified party may make an application to a magistrate's court for a variation order under the Proceeds of Serious Crime Act.

27. Any person who contravenes these Regulations shall be guilty of an offence and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years, or to both.

Offences and penalties

28. In proceedings against a specified party for an offence under these Regulations, it shall be a defence for a specified party to show that it took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations.

Defence