

FINANCIAL INTELLIGENCE ACT, 2009

No. 6



of 2009

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FIRST SCHEDULE

SECOND SCHEDULE

An Act to provide for the establishment of the Financial Intelligence Agency; to establish a National Coordinating Committee on Financial Intelligence; 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: 13.05.2009

Date of commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Financial Intelligence Act, 2009 and shall come into operation on such date as the Minister may by Order, appoint.

Short title and commencement

2. In this Act unless the context otherwise requires —

Interpretation

“Agency” means the Financial Intelligence Agency established under section 3;

“Committee” means the National Coordinating Committee on Financial Intelligence established under section 6;

“comparable body” means an institution or government agency outside Botswana with functions similar to those of the Agency;

“Director” means the Director of the Agency;

“Directorate” means the Directorate of Intelligence and Security established under the Intelligence and Security Service Act;

Act No. 16 of 2007

“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;

“financial offence” means money laundering, financing of terrorism or the acquisition of property from the proceeds of any other offence”;

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

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

Cap. 08:03

“property” means money or any other movable, immovable, corporeal, or unincorporeal thing and includes any rights, securities and any interest in privileges and claims over the property including —

- (a) any currency, whether or not the currency is legal tender of 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,
- (c) any balance held in any currency with a bank outside Botswana,
- (d) motor vehicle, ship, aircraft, boat, works of art, jewellery, precious metal or any other item of value,
- (e) any right or interest in property,
- (f) funds or other assets and any interest, dividends or income on or value accruing or generated by such funds or assets, and
- (g) stored value devices;

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- “specified party” means a person listed in the First Schedule to this Act;
- “supervisory authority” means a person listed in the Second Schedule to this Act except that the Agency shall act as a supervisory authority for a specified party that does not have a supervisory authority;
- “suspicious transaction” means a transaction which —
- (a) gives rise to a reasonable suspicion that it may involve financial offence,
 - (b) gives rise to a reasonable suspicion that it may involve property connected to, or to be used to finance terrorism, whether or not the property represent the proceeds of an offence,
 - (c) is made in circumstances of unusual or unjustified complexity,
 - (d) appears to have no economic justification or lawful objective,
 - (e) 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
 - (f) gives rise to suspicion for any other reason;
- “transaction” includes —
- (a) opening an account, issuing a passbook, renting a safe deposit box, entering into a fiduciary relationship or establishing any other business relationship, and
 - (b) a proposed transaction.

PART II — *Establishment of Financial Intelligence Agency*

Establishment
of Agency

3. (1) There is hereby established an Agency, to be called the Financial Intelligence Agency which shall consist of a Director and such other officers of the Agency, as may be necessary for the proper performance of the functions of the Agency.

(2) The Minister may appoint a Director and subject to section 5, no person shall be appointed Director unless he or she possesses such qualifications as the Committee may determine.

Cap. 26:01

(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 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.

Functions
of Agency

4. (1) The Agency shall be the central unit responsible for requesting, receiving, analyzing 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 financial offences; or
- (c) concerning the financing of any activities or transactions related to terrorism.

- (2) For the purposes of subsection (1), the Agency shall —
- (a) collect, process, analyze 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 regarding a report made in accordance with this Act; and
 - (g) exchange information with a comparable body.
- (3) In furtherance of the functions of the Agency, the Director may consult with and seek such guidance from law enforcement officers, government agencies and such other persons as the Agency considers desirable.
- 5.** (1) No person shall be appointed as Director or officer of 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 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 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 or officer shall not perform any functions of the Agency;
 - (b) the office of the Director or of the officer shall become vacant; and
 - (c) a new Director or officer shall be appointed.

Security
Screening of
Director,
etc.

PART III — *National Coordinating Committee on Financial Intelligence*

Establishment
of National
Coordinating
Committee on
Financial
Intelligence

6. (1) There is hereby established a National Coordinating Committee on Financial Intelligence.

(2) The Committee shall have members consisting of the Director and representatives of —

- (a) the Ministry of Finance and Development Planning 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 Services;
- (g) the Ministry of Foreign Affairs and 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; and
- (l) Ministry of Defence, Justice and Security.

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

Functions of
Committee

7. 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

8. (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 or 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 Identify Customers and Keep Records*

9. (1) A specified party shall —
- Obligations of
specified party
- (a) 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;
 - (b) 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;
 - (c) ensure that a compliance officer designated under paragraph (b) has at all times, timely access to customer identification data, transaction records and other relevant information;
 - (d) implement and maintain compliance programmes; and
 - (e) develop and maintain audit functions to 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.
- (2) For the purposes of subsection (1) —
- (a) programmes referred to in subsection (1) shall be consistent with instructions, guidelines or recommendations issued under section 27 (1) (b) and may include —
 - (i) the establishment of procedures to ensure high standards of integrity of employees and a system to evaluate the personal, employment and financial history of employees;
 - (ii) on-going employee training programme with regard to the specified party's obligations under this Act;
 - (iii) an independent audit function to check compliance with programmes; and
 - (b) the internal rules referred to in subsection (1) shall be consistent with prescribed requirements and be made available to all employees of the specified party and shall include —
 - (i) the information the record of which is required to be kept under this Part;
 - (ii) identification of reportable transactions; and
 - (iii) training of employees of the specified party to recognize financial offences.
- (3) 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 P100 000 as may be imposed by a supervisory authority.

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Identification
of customers

10. (1) A specified party shall not establish a business relationship or conclude a transaction with a customer unless the specified party has undertaken due diligence measures and such other steps as may be prescribed —

- (a) to establish and verify the identity of the customer;
- (b) if the customer is acting on behalf of another person, to establish —
 - (i) the identity of that other person,
 - (ii) the customer's authority to establish the business relationship or to conclude a transaction on behalf of that other person;
- (c) if another person is acting on behalf of the customer, to establish and verify —
 - (i) the identity of the customer; and
 - (ii) that other person's authority to act on behalf of the customer.

(2) Where a specified party had established a business relationship with a customer before the coming into force of this Act, the specified party shall not conclude a transaction in the course of that relationship unless it has complied with subsection (1).

(3) Proof of identity of a customer under this section shall be through the production of a National Identity Card for citizens and a passport for non citizens.

(4) A person who transacts business with a specified party using false identification documents shall be guilty of an offence and liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years or to both.

(5) A specified party that contravenes a provision of this section shall be liable to such fine not exceeding P250 000 as may be imposed by the supervisory authority.

Keeping of
records

11. (1) Where a specified party establishes a business relationship or concludes a transaction with a customer, the specified party shall maintain records of —

- (a) the identity of the customer;
- (b) if the customer is acting on behalf of another person —
 - (i) the identity of the person on whose behalf the customer is acting, and
 - (ii) the customer's authority to act on behalf of that other person;
- (c) if another person is acting on behalf of the customer —
 - (i) the identity of that other person, and
 - (ii) that other person's authority to act on behalf of the customer;
- (d) the manner in which the identities of the persons referred to in paragraphs (a), (b) and (c) were established;
- (e) the nature of the business relationship or transaction;
- (f) the amount involved in the transaction and the parties to the transaction;
- (g) all accounts that are involved in a transaction concluded by a specified party in the course of a business relationship or single transaction;
- (h) the name of the person who obtained the information referred to under paragraphs (a), (b) and (c) on behalf of the specified party; and
- (i) any document or copy of a document obtained by the specified party in order to verify a person's identity.

(2) Records kept in terms of subsection (1) may be kept in electronic form.

- 12.** (1) A specified party shall keep records referred to under section 11 for at least five years from the date a transaction is concluded. Period records to be kept
- (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 11 for such longer period as may be specified in the request.
- 13.** (1) The duty imposed under section 11 on a specified party may be performed by a third party on behalf of the specified party. Records kept by third party
- (2) Where a specified party appoints a third party to perform duties imposed under section 11, 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 11, the specified party shall be liable for the failure.
- 14.** An electronic record kept in accordance with section 11 shall be admissible as evidence in court. Admissibility of electronic records
- 15.** (1) A specified party that fails to keep records in accordance with sections 11 and 12 shall be liable to a fine not exceeding P100 000 as may be imposed by the supervisory authority. Offences relating to records
- (2) A person who destroys or removes any record, register or document kept in accordance with this Part shall be guilty of an offence and liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years or to both.
- 16.** (1) An examiner of the Agency or supervisory authority shall have access to any record kept in accordance with section 11 and may make extracts from or copies of any such records. Access to records of specified party
- (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 may be relevant to the examination.
- (4) The specified party, its officers and employees shall give the examiner full and free access to the records and other documents of the specified party as may be reasonably required for the examination.

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- (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,

shall be guilty of an offence and liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five 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 V — Reporting Obligation and Cash Transactions

Specified party reporting

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

(2) Nothing in subsection (1) shall be construed as restricting an attorney from reporting a suspicious transaction of which he or she has acquired knowledge in privileged circumstances if it has been communicated to the attorney with a view to the furtherance of a criminal or fraudulent purpose.

(3) For purposes of this section, attorney has the same meaning assigned to it under the Legal Practitioners Act.

Cap. 61:01
Cash transactions above prescribed limit

18. (1) Notwithstanding the provisions of section 17, a specified party 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 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 from the customer, from the person acting on behalf of the customer or from a person on whose behalf the customer is acting.

(2) A specified party that contravenes a provision of this section shall be liable to a fine not exceeding P100 000 as may be imposed by the supervisory authority.

- 19.** (1) A person who carries on, is in charge of, manages, or is employed by a business, shall report a suspicious transaction to the Agency. General reporting
- (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 shall be guilty of an offence and liable to a fine not exceeding P50 000 or to imprisonment to a term not exceeding three years or to both.
- 20.** Subject to the Customs and Excise Act, the Botswana Revenue Services Authority shall forward to the Agency records in such form as may be prescribed, of cash in excess of such amount as may be prescribed, conveyed into or out of Botswana. Conveyance of cash
Cap. 50:01
- 21.** (1) A specified party 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. Electronic transfer of money into or out of Botswana
- (2) A specified party that contravenes a provision of subsection (1) shall be liable to a fine not exceeding P1 000 000 as may be imposed by the supervisory authority.
- 22.** A report made under this Part shall be in such form as may be prescribed and shall include — Content of report
- (a) the identification of the customer and other party to the transaction;
 - (b) the description of the nature of the transaction;
 - (c) the amount of the transaction;
 - (d) circumstances giving rise to the suspicion;
 - (e) the business relationship of the customer to the person making the report;
 - (f) where the customer is an insider, whether such customer is still affiliated with the specified party;
 - (g) any voluntary statement as to the origin, source or destination of the proceeds;
 - (h) the impact of the suspicious transaction on the financial soundness of the specified party; and
 - (i) the names of all the officers, employees or agents dealing with the transaction.
- 23.** A specified party 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 Agency directs otherwise. Continuation of transaction
- 24.** The Agency shall, where it has reasonable grounds to suspect that a transaction may involve the commission of a financial offence, direct in writing, the specified party or person who made the report, not to proceed with the transaction for such period not exceeding ten working days as shall be stated in the notice, in order to allow the Agency — Interruption of transaction by Agency
- (a) to make the necessary inquiries concerning the transaction; or
 - (b) if the Agency deems it appropriate, to inform and advise an investigatory authority.

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Offences relating to reporting

25. (1) A specified party that fails to make a report under this Part or continues with a transaction in contravention of section 24 shall be liable —

- (a) to a fine not exceeding P50 000;
- (b) to a suspension or revocation of licence or registration as the case may be; or
- (c) to both penalties prescribed under paragraphs (a) and (b),

as may be imposed by the supervisory authority.

(2) A person that fails to make a report under this Part or continues with a transaction in contravention of section 24 shall be liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding six months or to both.

(3) A person involved in reporting under this Part shall not disclose to the person involved in the transaction or to an unauthorized third party that the transaction has been reported to the Agency or that the Agency has requested further information under section 28 (1).

(4) A person who contravenes subsection (3) shall be guilty of an offence and liable to a fine not exceeding P50 000 or to imprisonment to a term not exceeding three years or to both.

Indemnity of person making report

26. (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 28 (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.

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

Obligations of supervisory authorities

27. (1) Notwithstanding the provisions of section 4 (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; and
- (d) maintain statistics concerning compliance measures adopted or implemented by the specified party and sanctions imposed on such specified party, under this Act.

- (2) A supervisory authority may —
- (a) issue a directive, penalizing 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.

28. (1) Where a report of a suspicious transaction has been made to the Agency, the Director may, for the purposes of assessing whether any information should be disseminated to an investigatory or supervisory authority, request further information in relation to the 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; or
- (e) other administrative agencies of the Government.

(2) Information requested under subsection (1) shall be provided without a court order and within such time limits as may be prescribed.

(3) A person who refuses to supply information requested under this section shall be guilty of an offence and liable to a fine not exceeding P100 000 or to imprisonment to a term not exceeding five years or to both.

29. (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
- (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;

Receipt of
information by
Agency

Referral of
information by
Agency

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- (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

30. 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
organization

31. (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 statistics on the number of information disclosed to a comparable body and the number of requests of financial information from a comparable body.

32. 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.

Certificate
issued by
Agency

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

Information
held by
Agency

(2) A person shall not disclose confidential information held by or obtained by the Agency except —

- (a) within the scope of that person's power and duties in terms of any legislation;
- (b) for the purposes of carrying out the functions of this Act; or
- (c) with the permission of the Agency.

(3) A person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding P50 000 or to imprisonment to a term not exceeding three years or to both.

PART VII — *General Provisions*

34. (1) The Director and other officers of the Agency shall —

Confidentiality
by Director, etc.

- (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 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 or officer of the Agency contravenes this section he or she shall be guilty of an offence and liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding three years or to both.

35. (1) Subject to subsection (2), the Director 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 —

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

- (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 or officer is so altered as to be reduced or increased in value by a minimum of P200 000, the Director or officer shall make a fresh declaration.

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- (3) A declaration of assets filed under this section shall not be disclosed to any person except with the consent of the Director or officer concerned or by order of a court.
- Indemnity of Director, etc.** **36.** (1) No matter or thing done or omitted to be done by the Director or other officer of the Agency 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 or other officer personally liable to an action, claim or demand.
- (2) The Director or officer of the Agency who receives a report under this Act shall not incur liability for any breach of confidentiality or any disclosure made in compliance with this Act.
- Exempt transactions** **37.** The following shall be exempt from the application of this Act, namely a transaction between —
- (a) the Bank of Botswana and a bank;
 - (b) a bank and another bank;
 - (c) a bank and a non bank financial institution; and
 - (d) such other persons or transaction as may be prescribed.
- 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 the First Schedule by —
- (a) adding to the list, a specified party used or likely to be used in future to commit a financial offence; or
 - (b) deleting from the list a specified party not used and unlikely to be used in future to commit a financial offence.
- (3) The Minister shall before amending the First Schedule, give the affected persons at least 60 days written notice to submit to the Minister written submissions on the proposed amendment.
- Transitional provisions** **39.** The Minister may, by order published in the Gazette, make such transitional arrangements as shall be necessary for the establishment of the Agency.
- 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;
 - (b) reporting 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 is to keep records required under this Act.

FIRST SCHEDULE
Specified Parties
(*sec 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 Casino Act, Cap. 19:01
8. A Non Bank Financial Institutions as defined in the Non Bank Financial Institutions Regulatory Authority Act, Act, No. 2 of 2007
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, Cap. 53:03
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. Money remitters

SECOND SCHEDULE
Supervisory Authorities
(*sec 2*)

1. The Bank of Botswana established under the Bank of Botswana Act, Cap. 55:01
2. The Registrar of Companies as defined in the Companies Act, Cap. 42:01
3. The Real Estate Advisory Council established under the Real Estate Professionals Act, Cap. 61:07
4. The Casino Control Board established under the Casino Act, Cap. 19:01
5. The Law Society of Botswana established under the Legal Practitioners Act, Cap. 61:01
6. Non Bank Financial Institutions Regulatory Authority, established under the Non Bank Financial Institutions Regulatory Authority Act, No. 2 of 2007
7. Registrar of Societies established under the Societies Act, Cap. 8:01
8. Botswana Institute of Accounts established under the Accountants Act, Cap. 61:05

PASSED by the National Assembly this 2nd day of April, 2009.

BARBARA N. DITHAPO,
Acting Clerk of the National Assembly.