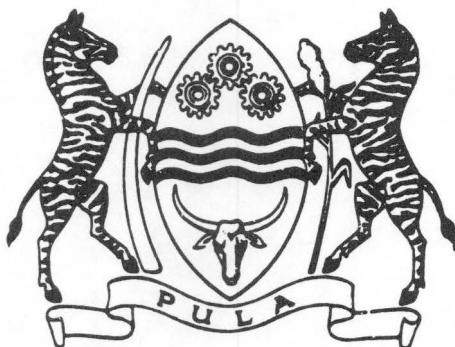


# REPUBLIC OF BOTSWANA



## GOVERNMENT GAZETTE

### EXTRAORDINARY

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GABORONE

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*Bill No. 16 of 1991*

# **BOTSWANA SAVINGS BANK BILL, 1991**

*(Published on 11th November, 1991)*

## **MEMORANDUM**

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

The main purpose of the Bill is to establish a new Government owned, but autonomous, financial institution to replace the old Botswana Savings Bank, which was itself the successor of the Post Office Savings Bank. The objectives of the new bank are to provide banking and financial services for all the peoples of Botswana, to mobilize local savings and promote the saving habit of Botswana.

The Bill provides for the establishment of a Board of Directors which will be responsible for the general policy and supervision of the operations of the Bank, and for the transfer of the assets and liabilities of the old bank to the new bank. Personnel of the old bank may be offered posts in the new bank, and if they accept this will mean a change from the status of public servants to that of employees of a parastatal, but independent, corporate body. Personnel who are not offered such posts, or who reject any offer to transfer will be reabsorbed into the public service.

**F.G. MOGAE,**

*Minister of Finance and Development  
Planning.*

## **ARRANGEMENT OF SECTIONS**

### **SECTION**

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22. Non-liability of Government etc.
23. Regulations
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## A BILL

—entitled—

**An Act to provide for the establishment of the Botswana Savings Bank as an independent, but wholly Government owned corporate body to provide banking and financial services for all the peoples of Botswana.**

*Date of Assent:*

*Date of Commencement:*

ENACTED by the Parliament of Botswana

Short title  
and comm-  
cement

1. This Act may be cited as the Botswana Savings Bank Act, 1991, and shall come into operation on such date as the Minister, after consultation with the Board, may by notice in the Gazette appoint:

Provided that the Minister may appoint different dates for the coming into operation of different provisions of the Act.

Interpret-  
ation

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

“Bank” means the Botswana Savings Bank established under section 3;  
“banking business” means the business of accepting from members of the public money deposits payable on demand, or after a fixed period of time, or after notice, or any similar operation through the sale or placement of bonds, certificates, notes or other securities, and the use of such funds, either in whole or in part, whether within or without Botswana, for loans, advances, investments or any other operations authorized by law or by customary banking practice;  
“Managing Director” means the Managing Director appointed in terms of section 8;

“savings bank year” means the period of twelve months ending on the 31st March in each year;

“statutory reserve account” means the prescribed reserve account in terms of the Financial Institutions Act.

Establishment  
of Bank

3. (1) There is hereby established the Botswana Savings Bank to replace the present Botswana Savings Bank, which shall be an independent, national, financial institution, wholly owned by Government, for the purpose of providing banking and financial services for all the people of Botswana under the supervision of the Bank of Botswana.

(2) The Bank shall be a body corporate capable under its own name of suing and of being sued, and of doing anything and entering into any transaction which bodies corporate may by law do and enter into which is incidental or conducive to the carrying on of its banking business under this Act.

(3) The Bank shall conduct its business according to sound commercial principles, and in accordance with the requirements of the Financial Institutions Act, with the objectives of —

(a) promoting the saving habit among the peoples of Botswana and mobilizing local savings; and

(b) granting loans on commercial terms and providing efficient banking and financial services to meet the requirements of the rural and urban population of Botswana.

(4) In furtherance of its objectives the Bank may —

(a) accept deposits and issue savings books and issue such financial instruments as it considers necessary or desirable to meet the needs of the peoples of Botswana;

(b) receive loans from various sources;

(c) enter into credit relations with private persons, small businesses and parastatal and private corporations throughout Botswana;

(d) invest its funds in accordance with sound investment principles providing adequate reward for any risk involved;

(e) maintain a statutory reserve account and such minimum percentage of liquid assets as may be specified in the Financial Institutions Act; and

(f) offer such other viable banking or financial services as the Board may consider necessary or desirable to meet the future needs of the peoples of Botswana.

(5) The Bank is authorized to act as an agent for the administration of funds, other than the funds of the Bank, on behalf of individuals, organizations, or Government or other administrations.

(6) The authorized capital of the Bank shall be 20 (twenty) million Pula, of which the first 5 (five) million Pula shall be fully subscribed.

4. (1) The accounts of the Bank shall be audited each year by independent auditors appointed by the Board with the approval of the Bank of Botswana. Audit of  
accounts of  
Bank

(2) After the accounts have been audited, the Board shall send to the Minister, and to the Bank of Botswana, not later than 6 months after the end of the savings bank year, copies of the auditor's report, the audited accounts and the annual report of the Bank.

(3) The Minister shall arrange for a copy of the audited accounts and the auditor's report to be laid before the National Assembly, and for these to be published in such manner as he may direct.



5. (1) There shall be established a Board of Directors of the Bank, herein referred to as the Board, which shall be responsible for the general policy of the Bank, and the supervision of its operations in accordance with the provisions of this Act.

(2) The Board shall consist of a chairman and eight other members as follows —

- (a) three members appointed by the Minister from the public service, one of whom shall be appointed as chairman;
- (b) four members appointed by the Minister from the private sector, being persons who, in the opinion of the Minister, have the necessary knowledge and experience to contribute successfully to the development of the Bank;
- (c) the Director General of Botswana Postal Services, and the Managing Director of the Bank, who shall be ex officio members.

(3) Members of the Board, other than ex officio members, shall be appointed for periods of not more than 4 years, so arranged that the term of office of not more than any two members shall expire in the same year, but shall be eligible for re-appointment.

(4) Members of the Board may elect from amongst themselves a person to be deputy chairman, and such deputy chairman shall preside over meetings of the Board when the chairman is for any reason absent therefrom.

(5) A member of the Board other than an ex officio member may resign his membership by notice in writing to the Minister, and the Minister may, at any time and at his discretion, cancel the membership of any such member.

(6) Any member of the Board who has an interest, or whose spouse has an interest, in any company or undertaking with which the Bank proposes to enter into a contract, or has an interest in any contract which the Bank proposes to enter into, shall disclose such interest and the nature and extent thereof, and shall not vote or take part in any proceedings of the Board relating to such contract.

(7) (a) The Board shall meet at least four times in each year at such times as it may determine at the commencement of each savings bank year, and extraordinary meetings may be convened by the chairman at any time at the request in writing of any member of the Board.

(b) Attendance fees for meetings of the Board shall be as determined by the Minister.

(8) (a) At meetings of the Board a quorum shall be at least five members, of which at least one shall be from the private sector.

(b) All matters arising at meetings of the Board shall be determined by a majority of the members present and voting, and where the votes are equal the chairman, or in his absence the deputy chairman, shall have a second or casting vote.

(9) The Board may, and shall if the Minister so directs, request the attendance at any meeting of the Board, of any person who can, in its considered opinion, assist or advise the Board in respect of any matter before it, and such person whilst attending such meeting shall have all the rights of a member, save that of voting, and his attendance shall not count in the constitution of a quorum.

(10) The validity of any act or proceedings of the Board shall not be affected by any vacancy in the membership thereof, or by any defect in the appointment of any member thereof.

6. A person shall not be eligible to be appointed as a member of the Board, and if appointed shall immediately cease to be a member in the following circumstances —

Disqualification from membership of Board

- (a) he is or becomes a member of the National Assembly;
- (b) he is or becomes an employee of the Bank or any other financial institution;
- (c) if, having been appointed to the Board by virtue of his holding of a public office, he ceases to hold that office;
- (d) he is or has been declared insolvent or bankrupt under any law in any country, or he suspends payment of his debts, or compounds with his creditors;
- (e) he is or has been convicted of any offence involving dishonesty;
- (f) he becomes of unsound mind;
- (g) being the holder of professional qualifications, he is disqualified or suspended, other than at his own request, from practising that profession in Botswana or any other country by order of any competent authority made in respect of him personally; or
- (h) he is absent from three consecutive meetings of the Board without such reason as the Minister considers sufficient.

7. (1) The Board shall be responsible for the efficient operation and administration of the Bank, and in particular, and without prejudice to the generality of the foregoing, shall have power to —

Powers of Board

- (a) appoint and dismiss any member of the senior management of the Bank, subject to the approval of the Minister;
- (b) determine the general policy of the Bank in respect of its banking business;
- (c) determine the rates of interest, banking fees, and loan conditions of the Bank, in consultation with the senior management of the Bank;
- (d) approve the annual accounts and report of the Bank;
- (e) approve the annual estimates of revenue and expenditure for the next financial year;
- (f) survey all activities, financial and otherwise of the Bank;

- (g) introduce internal regulations for all the different types of banking business undertaken by the Bank;
- (h) determine the organization and structure of the Bank;
- (i) open or close branches of the Bank in consultation with the senior management of the Bank;
- (j) with the approval of the Minister, determine all matters concerning the purchase or sale of real estate; and
- (k) make any recommendations to the Minister with regard to any increase in the issued capital of the Bank.

(2) After allowing for the expenses of operations during each year, and making provision for the statutory reserve account, bad and doubtful debts, depreciation of fixed assets and such other contingencies or provisions as are customarily made by financial institutions, the Board shall determine the amount and distribution of any net profits for that year.

Senior  
management  
of Bank

8. (1) The Minister shall appoint, upon such terms and conditions as he may, after consultation with the Board determine, a Managing Director of the Bank and two deputies to the Managing Director.

(2) The Board shall appoint such other senior officers of the Bank as it considers necessary for the proper conduct of the affairs of the Bank, such senior officers, together with the Managing Director and his two deputies, being collectively referred to in this Act as the senior management of the Bank.

(3) No person shall be appointed to the senior management of the Bank unless he is qualified by experience and training and has demonstrated that he is competent to manage the business of the Bank.

(4) The Managing Director of the Bank shall, subject to such directions on matters of general policy as may be given by the Board, be responsible for the day to day operation of the business and administration of the Bank, and the control of its employees.

(5) The Managing Director may delegate to any other member of the senior management the exercise of any of the powers or the performance of any of the functions that he is, under this Act, authorized to exercise or perform.

(6) Any member of the senior management may resign from office by notice in writing addressed to the Board.

Appointments  
to Bank etc.

9. (1) The Board may, from time to time, acting on the recommendations of the Managing Director, determine the staff of the Bank, or any changes in such staff, which may be necessary for the proper discharge of the functions of the Bank, and the terms and conditions of employment of such staff.

(2) (a) The appointment, dismissal and discipline of the Managing Director and all other members of the senior management shall be made by the Board, with the approval of the Minister.

- (b) The appointment, dismissal and discipline of all staff other than senior management shall be the responsibility of the Managing Director.

(3) The Board may, from time to time, and on such terms and conditions as it deems appropriate, appoint and employ such agents and contractors as it considers necessary for the Bank to carry out its functions under this Act.

10. The Board shall approve, and may from time to time amend, terms and conditions of service for all officers and staff of the Bank, and may —

Terms and  
conditions  
of service

- (a) establish and make contributions to any pension or medical fund or contributory scheme for the benefit of its officers and staff, and may require such officers and staff to contribute to any such fund or scheme;
- (b) grant pensions, gratuities or retiring allowances for officers and staff.

11. (1) The banking business of the Bank shall be conducted at such post offices, and such other places, and on such days and at such hours as the Managing Director may, from time to time direct:

Conduct of  
business of  
Bank

Provided that the Managing Director shall consult the Director General of Botswana Postal Services before issuing any directions in respect of any post office.

(2) The Managing Director shall keep or cause to be kept full and proper accounts and records in relation to all operations of the Bank.

(3) The Managing Director shall, in accordance with the directions of the Board, realize or otherwise deal with investments of Bank moneys.

(4) Moneys deposited with the Bank shall not be regarded as loans raised by Government within the meaning of the General Loan and Stock Act, or any other written law.

12. (1) The Bank may accept deposits, up to any amount as may be prescribed, from any association, society, club or fund approved by the Managing Director.

Deposits by  
societies etc.

(2) A receipt under the hand of the trustees, treasurer or other responsible officer or officers of any such association, society, club or fund for any moneys paid from its account, shall be a complete discharge to the Bank in respect of such moneys.

13. Subject to the provisions of any regulations or made under this Act, deposits may be made by or for the benefit of any person who has not attained the age of twenty-one years, and repayment may be made to any such person after he has attained the age of seven years in the same manner as if he had attained the age of twenty-one years, but in the case of a person who has not attained the age of seven years repayment may only be made as may be prescribed.

Deposits by  
or on behalf  
of minors



Deposits by  
a trustee

14. (1) A trustee may make deposits in a trust account in the joint names of such trustee and the person on whose behalf the deposits are made, but repayments of such deposits and any interest due thereon shall not, subject to the provisions of this Act, be made without the receipt of the trustee and such person.

(2) In the event of the death of the person on whose behalf the deposits were made, repayment thereof shall not be made without the receipts of the trustee and the executors or administrators of the estate of the deceased person, and their receipts shall be a complete discharge to the Bank for any moneys so repaid.

(3) In the event of the death, disability or removal of the trustee, repayment of the moneys standing to the credit of the person on whose behalf the deposits were made, shall not be made without the receipt of that person, and such other person as may have been appointed in terms of the trust or by the court to replace such trustee, or failing any such appointment as the managing director may appoint, and their receipt shall be a complete discharge to the Bank for any moneys so repaid.

Payment  
where bene-  
ficiary is  
of unsound  
mind

15. (1) In the case of a trust account where the person on whose behalf moneys have been deposited is certified to be insane or is otherwise adjudged to be of unsound mind or incapable of managing his own affairs under any written law within or outside Botswana, and application is made to the Managing Director for the repayment of any moneys due, the Managing Director may, if the moneys do not exceed P500, and on proof of such certification or adjudgement being furnished to him, repay the moneys upon such conditions as he deems fit, and to such person or persons as appear to him proper to receive such moneys, and the receipt of that person or those persons shall be a complete discharge to the Bank for any moneys so repaid.

(2) If, in a case such as is described in subsection (1), the moneys standing to the depositor's credit exceed P500, repayment shall only be made upon the receipts of the trustee and of a curator, and their receipts shall be a complete discharge to the Bank for any moneys so repaid.

Death of a  
depositor

16. (1) Where any depositor having any sum to his credit in the Bank dies, and such sum is not claimed by his legal representative within twelve months after the depositor's death, the Managing Director may repay such moneys to such person or persons, and in such proportions, as the District Commissioner of the district in which the depositor usually resided may specify.

(2) Every payment made in accordance with the provisions of subsection (1) shall be a valid and effectual discharge against any demand or charge made upon the funds of the Bank by any other person claiming as the legal representative of the deceased depositor, and any such person's remedy shall lie against the person who received the payment, and not against the Bank.

(3) If no claims are made against such moneys, or, if made, are not admitted by the Managing Director or by the determination or adjudication of a judge of the High Court in terms of section 20, the moneys shall, subject to any order made by the judge, be paid into the statutory reserve account of the Bank.

(4) Payment of moneys into the statutory reserve account in accordance with subsection (3) shall not prejudice any subsequent claim on such moneys.

17. Whenever the Managing Director makes any payment in terms of section 15 in respect of moneys forming part of an estate which is subject to administration under the Administration of Estates Act, he shall forward to the Master a statement showing the sum standing to the credit of the account of the deceased depositor, and the manner of the distribution thereof.

Notification of  
payment

18. (1) If, for a period of five years, there have been no operations on the account of a depositor by deposit or withdrawal, and the passbook relating to the account has not been presented to the principal office of the Bank, the account shall cease to bear interest with effect from the end of such period of five years, and the managing director shall cause the name of the depositor concerned to be published in the Gazette.

Account not  
operated on  
for five years

(2) If within a period of one year from the date of publication of the name of the depositor in terms of subsection (1) there have still been no operations on the account, and the passbook has not been presented to the principal office of the Bank, an amount equal to the amount standing to the credit of the account shall be paid into the statutory reserve account of the Bank, but without prejudice to any subsequent claim being made in respect of that amount.

19. (1) The Managing Director may, with the approval of the Board, make arrangements with any postal authority for the transfer, to Botswana and to the account of any depositor in the Bank, of moneys standing to the credit of any person in a post office savings bank under the control of such postal authority, or from Botswana to any such post office savings bank of moneys standing to the credit of any person in the Bank.

Remittances  
to and from  
Bank

(2) No transfer shall be made under this section unless it is made in accordance with any exchange control regulations for the time being in force, and with such conditions as may, from time to time, be laid down for the purposes of this section by the Managing Director with the approval of the Board.

20. If any dispute arises between the Managing Director and any other person as to any moneys deposited in the Bank, and cannot be resolved between them, the matter in dispute shall be referred in writing for the summary decision of a judge of the High Court, in chambers, and such

Determination  
of disputes

judge may enquire into and determine the matter in dispute, and his determination and adjudication thereon shall be final and conclusive and binding on the parties.

Non-disclosure  
of information

21. Except as is otherwise provided in this Act, no person concerned with the operations of the Bank shall disclose the name of, or any information regarding the transactions of, a depositor in the Bank, except —

- (a) to the Managing Director or any officer appointed to assist in carrying out the provisions of this Act in the exercise of his duties;
- (b) in terms of section 17;
- (c) when required to do so by order of a court;
- (d) when required to do so for the purpose of an investigation or prosecution of an alleged offence; or
- (e) to the Bank of Botswana, where such information is called for by such Bank under the provisions of the Financial Institutions Act:

Provided that nothing in this section shall be deemed to limit the authority of the Auditor-General to require a disclosure of such accounts and documents as may be necessary to enable him to carry out the duties imposed upon him by law.

Non-liability  
of Government  
etc.

22. When any payment is made or any act done by the Managing Director or any officer acting in accordance with the provisions of this Act, the Government, the Bank, the Managing Director and such officer shall not be liable in respect of any claim on the part of any person in connexion with such payment or act, but any person may nevertheless recover any sum lawfully due to him from the person to whom the Bank paid the same:

Provided that —

- (i) nothing in this section shall be construed as exempting any officer from liability for damage or loss caused to any person by reason of fraud or theft by such officer in relation to his official duties; and
- (ii) when any loss is caused to a depositor without any fault or neglect on his part, the Minister may authorize the payment to such depositor of the amount of the loss.

Regulations

23. (1) The Minister may make regulations for the better carrying out of the purposes and provisions of this Act.

(2) Without derogation from the generality of the powers contained in subregulation (1), the Minister may make regulations to provide for the following matters —

- (a) any obligation of the Bank, as the legal successor of the former Botswana Savings Bank, arising out of the offer of employment in the Bank established by this Act to the manager or any employee of such former Bank; and

- (b) the secondment, at the request of the Board and with the consent of the person concerned, of any member of the public service, the protection or extension of any pension rights in respect of such secondment, and the termination of any such secondment.

24. (1) The Minister shall, in consultation with the Board, declare the beginning and the end of a transition period, which shall not exceed twelve months. Transition period

(2) From the beginning of the transition period, all the assets and liabilities of the former Botswana Savings Bank shall be vested in the Bank established by this Act, which shall from that date take over and be deemed to have taken over the banking business of such former Bank.

(3) (a) Public servants employed in the former Botswana Savings Bank shall be made available to the Bank established by this Act in sufficient numbers to enable it to commence and conduct its operations efficiently.

(b) Such public servants may be offered appointments in the Bank on its own terms and conditions of service, but such public servants who do not accept such appointments, and public servants who are not offered such appointments, will be re-deployed in the public service.

(4) At the beginning of the transition period the accounts of the former Botswana Savings Bank shall be audited by an independent external auditor, who will determine the true economic value, including possible future losses, of all the assets and liabilities of such former Bank.

(5) At the end of the transition period a balance shall be worked out and endorsed by the auditor, with any losses covered by the Government, and such balance shall become the opening balance of the Bank established by this Act.

(6) At the end of the transition period the former Botswana Savings Bank shall be and be deemed to be dissolved, and the Botswana Savings Bank Act (Cap 56:03) revoked.

(7) From the beginning of the transition period, the reference in section 3 (1) of the Financial Institutions Act to the Botswana Savings Bank shall be deemed to be a reference to the Bank established by this Act.